

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Jeremy Adam Dalton

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

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**DEFENDANTS**

United States

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

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**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input checked="" type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. 2255**

Brief description of cause:

Motion to Correct, Vacate, or Set Aside Sentence under Johnson v. United States

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Hon. Roger T. Benitez

DOCKET NUMBER 12-cr-03367-BEN-1

DATE

06/13/2016

SIGNATURE OF ATTORNEY OF RECORD

s/Kara Hartzler

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
**(HONORABLE ROGER T. BENITEZ)**

**United States of America,**

Plaintiff,

v.

**Jeremy Adam Dalton,**

Defendant.

Case No. 12-CR-3367-BEN

Civil No. **'16CV1495 BEN**

**Motion to Vacate, Set Aside, or Correct  
Sentence Under 28 U.S.C. § 2255**

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
**(HONORABLE ROGER T. BENITEZ)**

**United States of America,**

Plaintiff,

v.

**Jeremy Adam Dalton,**

Defendant.

Case No. 12-CR-3367-BEN

Civil No. \_\_\_\_\_

**Motion to Vacate, Set Aside, or Correct  
Sentence Under 28 U.S.C. § 2255**

**I.**

**Introduction**

Jeremy Dalton moves this Court to vacate and correct his conviction and sentence under 28 U.S.C. § 2255 on the basis of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). In 2012, Mr. Dalton was convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). At sentencing, the district court used Mr. Dalton's criminal history to enhance his sentence. The court ruled that Mr. Dalton's prior conviction for felonious assault under Ohio Rev. Code § 2903.11(A)(1) qualified as a "crime of violence" under U.S.S.G. § 2K2.1(a)(4)(A).

1 The effect of this finding was to significantly increase Mr. Dalton's Guidelines  
 2 range. His base offense level was raised from 14 to 20 (before adjustments and  
 3 departures). Instead of a Guidelines range of 21-27 months, he faced a range at  
 4 sentencing of 41-51 months. The district court sentenced him to the high end of 51  
 5 months in prison.

6 Under *Johnson*, Mr. Dalton should not have started at a base offense level of  
 7 20, because his Ohio assault conviction does not qualify as a "crime of violence"  
 8 under the sentencing guidelines. In *Johnson*, the Supreme Court struck down the  
 9 residual clause of the Armed Career Criminal Act as unconstitutionally vague. 135  
 10 S. Ct. at 2557. Like the residual clause in the Act, section 4B1.2<sup>1</sup> of the Sentencing  
 11 Guidelines defines a "crime of violence" using language that is void for vagueness.  
 12 See *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015). And because Ohio felonious  
 13 assault does not qualify as a "crime of violence" under any of the alternative  
 14 definitions contained in § 4B1.2 (as an offense that has as an element the use,  
 15 attempted use, or threat of violent physical force, or as one of four specifically  
 16 enumerated offenses), Mr. Dalton is entitled to relief under 28 U.S.C. § 2255.

17 Mr. Dalton's petition is timely under 28 U.S.C. § 2255(f)(3) because he filed it  
 18 within one year of the Supreme Court's decision in *Johnson*. Therefore, Mr. Dalton  
 19 respectfully requests that this Court grant his § 2255 motion, vacate his current  
 20 sentence, and re-sentence him.

## 21 II.

### 22 Statement of Facts

#### 23 A. Indictment, plea agreement, and Pre-Sentence Report.

24 On November 26, 2012, Mr. Dalton waived indictment, and an Information was  
 25 filed charging him with one count of being a felon in possession of a firearm and  
 26

---

27 <sup>1</sup> U.S.S.G. § 2K2.1cmt. n.1 cross-references the definition of a "crime of violence"  
 28 found in U.S.S.G. § 4B1.2. This motion will generally refer to § 4B1.2 for clarity.



ammunition in violation of 18 U.S.C. § 922(g)(1). *See* Exhibit A. The same day he pleaded guilty by way of a plea agreement to Count One. *See* Dkt. No. 26. In the plea agreement, the parties agreed to Guidelines calculations that included a specific offense characteristic of 8-24 firearms under § 2K2.1(b)(1)(B) and a three-level adjustment for acceptance of responsibility under § 3E1.1, and a base offense level set at 20 under § 2K2.1. *See* Pre-Sentence Report (“PSR”) at 16. The government agreed to recommend a low-end Guideline sentence. *Id.* at 13. The parties also agreed that Mr. Dalton could seek additional adjustments, departures, and variances, and that the government could oppose them. *Id.*

The PSR calculated a base offense level of 20. *See id.* at 7 (citing § 2K2.1(a)(4)(A)<sup>2</sup>). It did so because it claimed that Mr. Dalton’s 2006 conviction for felonious assault under Ohio Rev. Code § 2903.11(A)(1) qualified as a “crime of violence” under § 4B1.2. *Id.*; *see* § 2K2.1(a)(4) (imposing a base offense level of 20 when the instant offense is committed after a felony conviction for a “crime of violence”). The PSR also recommended a four-level enhancement for the offense involving 8 to 24 firearms. *Id.* At criminal history II, and after the three-level reduction for acceptance of responsibility, the PSR calculated Mr. Dalton’s final adjusted offense level as 21 and his Guidelines range as 41-51 months in prison. *Id.* at 21.

If the PSR had not scored Mr. Dalton’s assault conviction as a “crime of violence,” his base offense level would have been 14. *See* § 2K2.1(a)(7).

## **B. Sentencing.**

Mr. Dalton appeared before the district court for sentencing on April 8, 2013. *See* Dkt. No. 45. At sentencing, the court followed the plea agreement and assigned

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<sup>2</sup> This and all citations to the United States Sentencing Guidelines are to the Nov. 1, 2012 edition in use at the time of Mr. Dalton’s sentencing.

him a base offense level of 20, a four-level adjustment for additional firearms, and a three-level adjustment for acceptance of responsibility. *See* Transcript of Sentencing Hearing (“Exhibit B”) at 13-14. With Mr. Dalton’s criminal history category at II, the court calculated his Guidelines range at 41-51 months. *Id.* at 14. The district court imposed a high-end sentence of 51 months. *Id.*

**C. Subsequent events.**

Mr. Dalton did not appeal his conviction or sentence.

On June 26, 2015, the Supreme Court issued its decision in *Johnson* striking down the “residual clause” of the Armed Career Criminal Act as unconstitutionally vague. 135 S. Ct. at 2557. Mr. Dalton now timely files this motion under § 2255 seeking relief under *Johnson*.

Mr. Dalton’s current scheduled release date from BOP custody is **February 3, 2017.**

**III.**

**Argument**

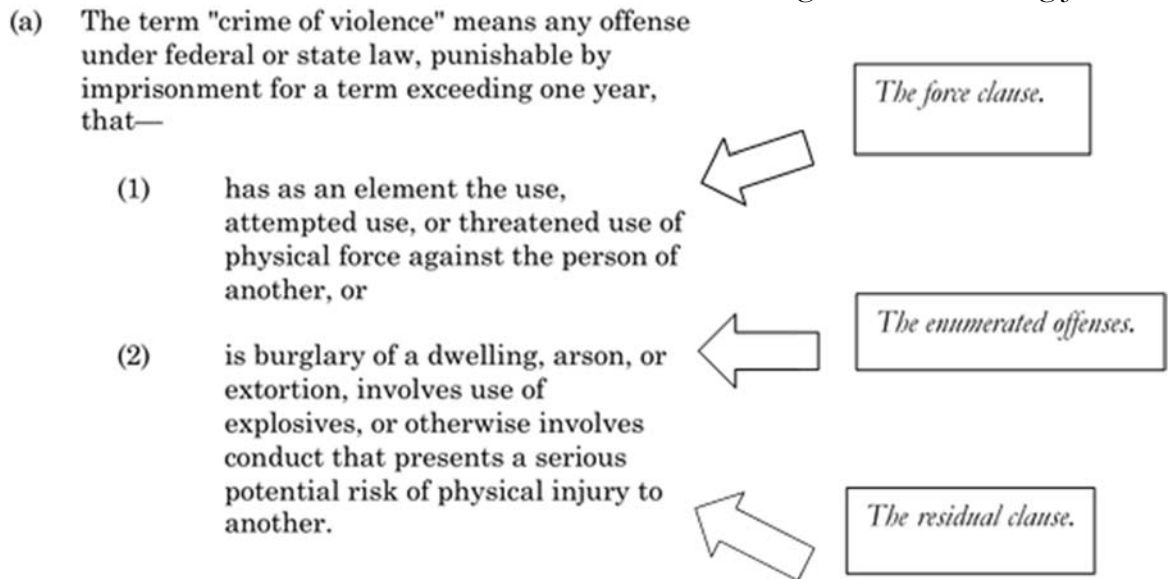
Mr. Dalton’s sentence was enhanced because the district court found that his prior conviction for felonious assault under Ohio Rev. Code § 2903.11(A)(1) qualified as a “crime of violence” under the Career Offender sentencing guideline, and thereby resulted in an enhanced base offense level for his felon-in-possession charge. However, Ohio felonious assault cannot qualify as a crime of violence after the Supreme Court’s decision in *Johnson*, because it no longer qualifies under any of the definitions contained in the Guideline. His sentence should be vacated, and he should be re-sentenced without the adjustment.

**A. Mr. Dalton’s conviction for felonious assault under Ohio Rev. Code 2903.11(A)(1) is not a crime of violence after *Johnson*.**

There are three ways a conviction can qualify as a “crime of violence” under the cross-referenced Career Offender sentencing guideline: (1) under the force clause; (2) as a match for one of the four enumerated, generic offenses; or (3) under

the now-unconstitutional residual clause. The Ohio assault statute doesn't qualify under any of the three.

First, Ohio felonious assault does not qualify as a crime of violence under the "force clause," for two reasons. The crime is not defined in terms of applying physical force, but in causing "physical injury" that is so broad, it expressly encompasses mental illness or conditions. Moreover, the offense does not require an *intentional* application of force. Second, the Ohio offense is not one of the four enumerated offenses. Third, Ohio felonious assault cannot qualify as a crime of violence under the residual clause, which is now void for vagueness following *Johnson*.



**FIG. 1** -The Career Offender sentencing guideline's definition of a "crime of violence."  
U.S.S.G. § 4B1.2.

1. Ohio felonious assault is not a crime of violence under the force clause because it is overbroad as to "physical force" and required mental state.

To qualify as a crime of violence under the force clause, an offense must have "as an element the use, attempted use, or threatened use of physical force against the person of another." § 4B1.2\*a)(1). However, Ohio Rev. Code § 2903.11(A)(1) does not require as an element the employment of "physical force," as shown by the fact that it expressly treats psychological conditions as "physical harm" and does not

1 require the intentional “use” of any force it does involve.<sup>3</sup>

2 The Ohio statute does not specify a use of force as an element, but takes as  
 3 the gravamen any knowing acts that “[c]ause serious physical harm.” However,  
 4 “serious physical harm” is expressly defined by statute to include “[a]ny mental  
 5 illness or condition of such gravity as would normally require hospitalization or  
 6 prolonged psychiatric treatment.” Ohio Rev. Code § 2901.01(A)(5)(a). The Supreme  
 7 Court has already held that “We think it clear that in the context of a statutory  
 8 definition of ‘violent felony,’ the phrase ‘physical force’ means *violent* force—that is,  
 9 force capable of causing **physical** pain or injury to another person.” *Curtis Johnson v.*  
 10 *United States*, 559 U.S. 133, 140 (2010) (emphasis added) (discussing definition of  
 11 “violent felony” in 18 U.S.C. § 924(e)(2)(B)(i), which is worded identically to the  
 12 force clause in § 4B1.2(a)(1)). Consequently, the Ohio felonious assault can lie where  
 13 the defendant commits some non-violent act that results in severe emotional trauma  
 14 to the victim. *See, e.g., State v. Cooper*, 743 N.E.2d 427 (Ohio App. 2000) (finding  
 15 multiple acts and omissions towards defendant’s children, resulting in their having  
 16 mental illness, sufficed to constitute felonious assault); *State v. Hodges*, 669 N.E.2d  
 17 256 (Ohio App. 1995) (holding priest’s cajoling victim into having sex, causing  
 18 victim’s mental breakdown, constituted felonious assault). Because the crime  
 19 includes causing non-physical harm with no use of force, it is overbroad and does  
 20 not necessarily involve the use or attempted use of violent “physical force.”

21 Moreover, the Ohio offense does not qualify as a “crime of violence” under  
 22 the force clause, because it does not require the *intentional* use or threatened use of  
 23 physical force. The Supreme Court first announced this rule in *Leocal v. Ashcroft*,  
 24 holding that DUI was not a crime of violence under the nearly identical force clause  
 25 in 18 U.S.C. § 16(a), because the offense could be committed through mere  
 26

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27  
 28 <sup>3</sup> The pertinent part of the statute reads: “(A) No person shall knowingly do either of  
 the following: [¶] (1) Cause serious physical harm to another or another’s unborn.”

negligence. *See* 543 U.S. 1, 9-10 (2004). The en banc Ninth Circuit went on to interpret *Leocal* as requiring “that to constitute a federal crime of violence an offense must involve the **intentional** use of force against the person or property of another.” *Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1132 (9th Cir. 2006) (en banc) (emphasis added); *see also United States v. Gomez-Leon*, 545 F.3d 777, 787 (9th Cir. 2008) (holding that to qualify as a crime of violence under the force clause, “the underlying offense must require proof of an **intentional** use of force”) (emphasis added). Likewise, in *United States v. Dixon*, the Ninth Circuit addressed the nearly identical provision in the Armed Career Criminal Act, defining a “violent felony” to include offenses with “an element of the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(b)(i). The court adhered to a long line of Ninth Circuit and Supreme Court precedents limiting violent felonies under the ACCA—as well as crimes of violence under § 16(a)—to those that require the *intentional* use of physical force. *See* 805 F.3d 1193, 1197 (9th Cir. 2015) (citing *Leocal* 543 U.S. at 12-13 and *(Curtis) Johnson*, 559 U.S. at 140)). Since the force clause in the ACCA is identical to the force clause in the Career Offender sentencing guideline, *compare* 18 U.S.C. § 924(e)(2)(B)(ii) *with* § 4B1.2(a)(2)(b); *see also United States v. Terrell*, 593 F.3d 1084, 1087 n.1 (9th Cir. 2010), in order for an offense to qualify as a “crime of violence” here involving the “active employment” of force, *Leocal*, 543 U.S. at 9, the state statute must require *intent*.

However, the Ohio felonious assault requires only knowledge, which, under Ohio law, is a separate and lesser mental state than purpose or intent. *See* Ohio Rev. Code § 2901.22(A) (“A person acts purposely when it is the person’s specific intention to cause a certain result”) & (B) (“A person acts knowingly, **regardless of purpose**, when the person is aware that the person’s conduct will probably cause a certain result”) (emphasis added); *State v. Cooney*, 544 N.E.2d 895, 905 (Ohio 1989) (“the culpable mental state required for a felonious assault conviction . . . is **not purpose**, but knowledge”) (emphasis added). But *Fernandez-Ruiz* contrasted the

1 accidental application of force discussed in *Leocal* with force that is the result of a  
 2 “purposeful act”: “ ‘Purposeful’ means ‘[d]one with a specific purpose in mind;  
 3 DELIBERATE.’ ” 466 F.3d at 1130 (citation omitted). Consequently, Ohio  
 4 defines the mental state required for felonious assault (knowledge) precisely in the  
 5 way *Fernandez-Ruiz* recognized disqualifies an offense as a crime of violence under  
 6 *Leocal*.

7 Because Ohio felonious assault cannot qualify as a violent felony under the  
 8 force clause of the ACCA, it likewise cannot qualify as a crime of violence under the  
 9 force clause of the Guidelines and so cannot serve as a predicate to the enhanced  
 10 base offense level.

11 **2. Ohio Rev. Code § 2903.11 does not qualify as an enumerated offense.**

12 The Career Offender sentencing guideline names four generic crimes which, if  
 13 a prior statute of conviction matches their elements, qualify that statute as a crime of  
 14 violence. *See* U.S.S.G. § 4B1.2(a)(2). The four generic crimes include “burglary of a  
 15 dwelling, arson, or extortion” or an offense involving use of explosives. *Id.*  
 16 However, Ohio felonious assault is manifestly not any of these four offenses. The  
 17 Ohio crime is patently not predicated on elements of entry of a dwelling, destruction  
 18 of property by fire, the constrained obtaining of property, or the use of explosives.  
 19 *See 2 Ohio Jury Instructions—Criminal* 503.11(A) (Apr. 2016) (jury must only find  
 20 defendant “knowingly [¶] caused serious physical harm”). Due to a total mismatch  
 21 of the required elements, § 2903.11(A)(1) does not qualify as an enumerated offense  
 22 in § 4B1.2.

23 **3. Following *Johnson*, Ohio felonious assault cannot qualify as a crime of**  
 24 **violence under section 924(c)’s residual clause.**

25 (*Samuel*) *Johnson* holds that the residual clause of the Career Offender  
 26 sentencing guideline is now void for vagueness, and so Mr. Dalton’s assault  
 27 conviction under § 2903.11(A)(1) cannot qualify as a “crime of violence” under that  
 28 prong of § 4B1.2(a)(2).



1                   a.     Johnson applies to the Sentencing Guidelines.

2             In other cases, the government has conceded – and this Court has accepted  
3 that concession – that *Johnson* applies to the Sentencing Guidelines. *See, e.g., United*  
4 *States v. Benavides*, 617 F. App’x 790 (9th Cir. 2015). In *United States v. Torres*, No. 14-  
5 10210 (9th Cir.) (argued and submitted on December 8, 2015), the United States  
6 agreed that “the invalidation of the ACCA’s residual clause in *Johnson* applies to the  
7 identically worded clause in § 4B1.2(a)(2), and thus that [the defendant’s] felony  
8 convictions, after *Johnson*, no longer qualify as ‘crimes of violence.’” *Torres*, No. 14-  
9 10210, ECF No. 53 at 4.

10            This Court has interpreted the identically worded residual clauses of the  
11 Armed Career Criminal Act and §4B1.2 interchangeably. *See, e.g., United States v.*  
12 *Willis*, 795 F.3d 986, 996 (9th Cir. 2015). Further, the advisory guidelines are subject  
13 to claims of unconstitutional vagueness. *Peugh v. United States*, 133 S. Ct. 2072, 2078  
14 (2013) (holding that the Ex Post Facto Clause applies to advisory guidelines); *see also*  
15 *United States v. Johnson*, 130 F.3d 1352, 1354 (9th Cir. 1997) (then-mandatory  
16 guidelines were susceptible to vagueness challenges); *Gall v. United States*, 552 U.S. 38,  
17 49 (2007) (continuing to require that the advisory guidelines be the starting point for  
18 sentencing).

19            In *Peugh*, the Sentencing Guidelines had changed between the defendant’s  
20 commission of the crime and his sentencing. 133 S. Ct. at 2078. The change  
21 increased the offense level, and therefore the Guidelines range to which the  
22 defendant was exposed. *Id.* at 2078-79. In finding that the Ex Post Facto Clause of  
23 the Constitution applied, the Court expressly rejected the government’s argument  
24 that no violation could occur where the Guidelines were merely advisory. *Id.* at 2087.  
25 Pointing to empirical evidence demonstrating the central, “lodestone” role the  
26 Guidelines play in “influencing the sentences imposed by judges,” the Court held  
27 that “the [Guidelines] range is intended to, and usually does, exert controlling  
28 influence on the sentence the court will impose.” *Id.* at 2084, 2085. This outsized

1 influence means, the Court held, that the Guidelines are susceptible to constitutional  
2 challenges even though they are now advisory. *Id.*

3 Here, the due process principles espoused in (*Samuel*) *Johnson*, combined with  
4 the application of constitutional protections to the Guidelines under *Peugh*, compel  
5 the conclusion that the identical residual clause of §4B1.2 is also unconstitutionally  
6 vague. *United States v. Madrid*, 805 F.3d 1204, 1211 (10th Cir. 2015); *see also Dimaya*,  
7 803 F.3d at 1120 (holding 18 U.S.C. § 16(b)'s residual clause, as incorporated in 8  
8 U.S.C. § 1101(a)(43)(F), is unconstitutionally vague).

9 Ohio felonious assault is not a crime of violence under § 4B1.2, and  
10 Mr. Dalton's enhanced sentencing guidelines based on his conviction under that  
11 statute violated due process.

12 **b.** *Johnson's application to the Guidelines is retroactive under Welch.*

13 A new rule has been "made retroactive to cases on collateral review" if "the  
14 Supreme Court holds it to be retroactive." *Tyler v. Cain*, 533 U.S. 656, 663 (2001).  
15 The Supreme Court has held that new substantive rules "generally apply  
16 retroactively," while new procedural rules do not. *Schriro v. Summerlin*, 542 U.S. 348,  
17 351-52 (2004); *see also Bousley v. United States*, 523 U.S. 614, 620 (1998); *Teague v. Lane*,  
18 489 U.S. 288, 311 (1989) (plurality op.). Substantive rules include rules that "narrow  
19 the scope of a criminal statute by interpreting its terms," *Schriro*, 542 U.S. at 351-52,  
20 or "alter[] the range of conduct or the class of persons that the law punishes," *id.* at  
21 353.

22 In *Welch v. United States*, the Supreme Court held that *Johnson* was a "new  
23 substantive rule that has retroactive effect in cases on collateral review." 136 S. Ct.  
24 1257, 1268 (2016). It is substantive, the Court held, because it changed the  
25 substantive reach of a sentencing enhancement. *Id.* at 1265. "*Johnson* establishes . . .  
26 that 'even the use of impeccable factfinding procedures could not legitimate' a  
27 sentence based on that clause. . . . It follows that *Johnson* is a substantive decision." *Id.*

28 Just as clearly, *Welch* held that *Johnson* is decidedly not a procedural rule. It



1 does not “allocate decision making authority between jury and jury, or regulate the  
 2 evidence that the court could consider in making its decision.” *Id.* (internal citations  
 3 and quotation marks omitted). Rather, *Johnson* affected the reach of the underlying  
 4 statute rather than the judicial procedures by which the statute is applied.” *Id.*

5 The fact that *Welch* arose in the context of the Armed Career Criminal Act is  
 6 of no effect. The holding of *Welch* is not limited to Armed Career Criminal Act  
 7 defendants, as the Court states: “The residual clause is invalid under *Johnson* so it can  
 8 no longer mandate or authorize *any* sentence.” *Id.* (emphasis added). “It follows that  
 9 *Johnson* is a substantive decision,” *id.*—not a substantive decision as it relates to  
 10 Armed Career Criminal Act defendants, but a substantive decision, period.

11 Under *Teague*, “either a rule is retroactive or it is not.” *United States v. Doe*, 810  
 12 F.3d 132, 154 & n.13 (3d Cir. 2015). As the government itself has previously argued,  
 13 it was “not aware of any . . . chameleon-like rules” that “were substantive for some  
 14 purposes and procedural for others.” Supplemental Brief for United States on  
 15 Rehearing En Banc, *Spencer v. United States*, No. 10-10676, at 15 (11th Cir. Aug. 15,  
 16 2013). Rather, a rule’s “status as a substantive rule is fixed,” and “does not fluctuate  
 17 based on whether the prisoner is challenging an Armed Career Criminal Act  
 18 enhancement, a mandatory guidelines enhancement, or, as here, an advisory  
 19 guidelines enhancement.” *Id.* at 15; *see also Reina-Rodriguez v. United States*, 655 F.3d  
 20 1182, 1189 (9th Cir. 2011) (en banc) (applying a rule that was substantive in the  
 21 Armed Career Criminal Act context to the guidelines). Because *Johnson* states a  
 22 substantive rule, it must be given retroactive effect, regardless of the context.

23 “Increasing a defendant’s sentence under the residual clause denies due  
 24 process of law” because it is “vague in all its applications.” *Johnson*, 135 S. Ct. at 2551.  
 25 Because it is invalid, the residual clause can no longer “mandate or authorize any  
 26 sentence.” Therefore, any “sentence that is based on that clause” is illegitimate.  
 27 *Welch*, 136 S. Ct. at 1265. And when a court enhances a sentence using the residual  
 28 clause of the Career Offender sentencing guidelines, that sentence is “based on” the

1 clause. As the Supreme Court main succicntly clear in *Peugh*, “the guidelines are in a  
2 real sense the *basis* for the sentence.” 133 S. Ct. 2072, 2083 (emphasis added).

3 i. The holding and reasoning of *Welch* apply with equal force  
4 to the Sentencing Guidelines.

5 It makes no difference whether a sentence is based on the residual clause in  
6 the Armed Career Criminal Act or the residual clause in the Career Offender  
7 sentencing guideline. In either case the sentence is illegitimate. By invalidating the  
8 residual clause in its entirety, “*Johnson* ‘changed the substantive reach of the  
9 [guidelines], ‘altering the range of conduct or class of persons’” that can be punished  
10 under the career offender – or any other enhancement based on § 4B1.2(a)(2)’s  
11 residual clause – guideline. *Welch*, 136 S. Ct. at 1265. Consistent with lower decisions  
12 before and after *Johnson*,<sup>4</sup> *Welch* made clear that the relevant “category” for  
13 retroactivity purposes is the *rule*, not the *type of case* in which the rule is invoked.

14 That this is so is made clear by the way the Court framed the issue. The  
15 question in *Welch*, as framed by the Court, was whether the “new rule [announced in  
16 *Johnson*] falls within one of the two categories that have retroactive effect under  
17 *Teague*,” which it defined as “categories of decisions” that are “substantive rules” or  
18 “watershed rules of criminal procedure,” *Welch*, 136 U.S. at 1264. (emphasis added).  
19 The Court did not, as the Government had hoped, even hint that it intended to  
20 divide Armed Career Criminal Act errors and Guidelines errors into “two distinct  
21

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22 <sup>4</sup> See, e.g., *United States v. Doe*, 810 F.3d 132, 154 & n.13 (3d Cir. 2015); *Narvaez v.*  
23 *United States*, 674 F.3d 621, 625-26 (7th Cir. 2011); *Brown v. Caraway*, 719 F.3d 583,  
24 594–95 (7th Cir. 2013); *Reina-Rodriguez v. United States*, 655 F.3d 1182, 1189 (9th Cir.  
25 2011); *Rozier v. United States*, 701 F.3d 681 (11th Cir. 2012); *In re Watkins*, 810 F.3d  
26 375, 383 (6th Cir. 2015) (holding in an ACCA case that *Johnson* is “categorically  
27 retroactive” to cases on collateral review); *In re Grant*, No. 15-5795 (6th Cir. March  
28 7, 2016) (authorizing successive § 2255 motion in a guidelines case based on  
*Watkins*); *Price v. United States*, 795 F.3d 731, 734 (7th Cir. 2015) (holding in an  
ACCA case that *Johnson* is “categorically retroactive”); *Stork v. United States*, No.  
15-2687, slip op. at 1 (7th Cir. Aug. 13, 2015).

categories” for retroactivity purposes. It held, without qualification, that the residual clause is invalid at all times and for all purposes. *Id.* at 1265. In light of the Court’s holding, one can only conclude that the substantive rule announced in *Johnson* is categorically retroactive to all cases in which it applies.<sup>5</sup>

ii. The Career Offender guideline is both uniquely statutory and uniquely severe in its application.

Congress has instructed that district courts “shall consider” the “sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines,” 18 U.S.C. § 3553(a)(4), an instruction that has always been and remains mandatory. And the Supreme Court has made clear that the guidelines are the sentencing court’s “starting point and . . . initial benchmark. *Gall v. United States*, 552 U.S. 38, 49 (2007). District courts “must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process,” *Peugh*, 133 S. Ct. at 2083. “When a defendant is sentenced under an incorrect guideline range – whether or not the defendant’s ultimate sentence falls within the correct range – the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.” *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345 (2016).

While all of the guidelines are legislative in nature, offender guideline is uniquely statutory and also uniquely severe. The Sentencing Commission established the career offender guideline pursuant to a congressional directive to “specify a sentence to a term of imprisonment at or near the maximum term authorized” for defendants convicted for at least the third time of a felony that is a “crime of violence” or a specified drug offense. *See* 28 U.S.C. § 994(h). Accordingly, the guideline ties the offense level to the statutory maximum for the offense of

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<sup>5</sup> *See Davis v. United States*, 564 U.S. 229, 243 (2011) (retroactivity is a “categorical matter”).

conviction and automatically places the defendant in Criminal History Category VI if he is convicted for at least the third time of a felony that is a “crime of violence” or a “controlled substance offense.” *See* U.S.S.G. § 4B1.1(a)-(b) (2015).

The Commission has no discretion to reduce the severity of the career offender guideline, *see United States v. LaBonte*, 520 U.S. 751, 757 (1997), despite the fact that it creates a “category of offender subject to particularly severe punishment,” *Buford v. United States*, 532 U.S. 59, 60 (2001). Indeed, whether or not a defendant is subject to that punishment makes a huge difference. The guideline range for a defendant convicted of a drug offense who is classified as a career offender is tied to the statutory maximum, while the guideline range for a person convicted of a drug offense who is not classified as a career offender is tied to the statutory minimum. As a result, the average career offender guideline minimum in 2014 (204 months) was 2.46 times the non-career offender guideline minimum (83 months), and the average sentence imposed on drug offenders classified as career offenders (138.6 months) was 2.35 times the average sentence imposed on drug offenders not classified as career offenders (62 months).

The mandatory guidelines, of course, “ha[d] the force and effect of laws,” were “binding on all judges,” and prescribed “the maximum [sentence] authorized.” *United States v. Booker*, 543 U.S. 220, 233-34 (2005).

The holding and reasoning of *Welch* compel the conclusion that *Johnson* applies retroactively in cases involving defendants who received a sentencing enhancement under the residual clause in USSG § 4B1.2(a).

**B. Mr. Dalton is otherwise entitled to relief under 28 U.S.C. § 2255, because his claim is cognizable, and his petition is timely.**

**1. Mr. Dalton’s claim is cognizable under § 2255(a).**

A federal prisoner may move to “vacate, set aside or correct” his sentence if it “was imposed in violation of the Constitution.” 28 U.S.C. § 2255(a). Mr. Dalton’s 51-month sentence was imposed in violation of the Constitution because it was

1 predicated on a residual clause that is “unconstitutionally vague”; thus, “imposing an  
 2 increased sentence under the residual clause . . . violates the Constitution’s guarantee  
 3 of due process.” *Johnson*, 135 S. Ct. at 2563. As demonstrated above, *Johnson*’s  
 4 constitutional holding regarding the Armed Career Criminal Act’s residual clause  
 5 applies to the nearly-identical residual clause in 18 U.S.C. § 924(c)(3)(B). *See Dimaya*,  
 6 803 F.3d at 1120 (applying *Johnson* to identical wording of residual provision in  
 7 § 16(b)). Thus, Mr. Dalton’s claim for relief is cognizable under the plain language of  
 8 § 2255(a).

9 This is all that is required. Because Mr. Dalton’s sentence was imposed “in  
 10 violation of the Constitution,” 28 U.S.C. § 2255(a), the “fundamental defect”  
 11 standard applicable to ordinary claims of statutory error does not apply. Only a non-  
 12 jurisdictional, non-constitutional error of law must constitute “a fundamental defect  
 13 which inherently results in a complete miscarriage of justice” in order to be  
 14 cognizable. *Hill v. United States*, 368 U.S. 424, 428 (1962); *see also United States v.*  
 15 *Addonizio*, 442 U.S. 178, 185 (1979); *Davis v. United States*, 417 U.S. 333, 343-344  
 16 (1974); *United States v. Foote*, 784 F.3d 931, 936 (4th Cir. 2015) (“[I]f the alleged  
 17 sentencing error is neither constitutional nor jurisdictional, a district court lacks  
 18 authority to review it unless it amounts to ‘a fundamental defect which inherently  
 19 results in a complete miscarriage of justice.’”) (citations omitted); *Narvaez v. United*  
 20 *States*, 674 F.3d 621, 623 (7th Cir. 2011) (“The term ‘miscarriage of justice’ comes  
 21 from the Supreme Court’s holding that a non-jurisdictional, non-constitutional error  
 22 of law is not a basis for collateral attack under § 2255 unless the error is ‘a  
 23 fundamental defect which inherently results in a complete miscarriage of justice.’”)  
 24 (citations omitted).

25 A claim based on *Johnson*, in contrast, is constitutional and therefore  
 26 cognizable. *See United States v. Coleman*, 763 F.3d 706, 708 (7th Cir. 2014) (although an  
 27 erroneous determination of an advisory guideline range “generally [is] not cognizable  
 28 on a § 2255 motion,” relief “is available” for “an error of constitutional . . .

1 magnitude”); *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (recognizing  
2 that “fundamental defect” standard does not apply to constitutional or jurisdictional  
3 error); Order, *Brown v. United States*, No. 15-10025 (11th Cir. Sept. 2, 2015) (granting  
4 certificate of appealability because although a claim that a defendant was  
5 misclassified as a career offender “is generally not cognizable” under circuit law  
6 applicable to errors of statutory interpretation, “*Johnson* involved a claim of  
7 constitutional error”).

8       **2.     This motion is timely under 28 U.S.C. § 2255(f)(3).**

9       Mr. Dalton’s motion is also timely under 28 U.S.C. § 2255(f)(3), which  
10 provides for a one-year limitations period to run from “the date on which the right  
11 asserted was initially recognized by the Supreme Court, if that right has been newly  
12 recognized by the Supreme Court and made retroactively applicable to cases on  
13 collateral review.”

14       The Supreme Court decided *Johnson* on June 26, 2015, and Mr. Dalton filed his  
15 claim within a year of that date. As discussed above, the Supreme Court recognized a  
16 new right in *Johnson*, and announced a substantive rule that is therefore retroactive to  
17 cases on collateral review.

1 IV.

2 **Conclusion**

3 Because Mr. Dalton's Ohio felonious assault conviction is no longer a crime  
4 of violence after *Johnson*, and because he has shown that he is otherwise entitled to  
5 relief under 28 U.S.C. § 2255, Mr. Dalton respectfully requests that this Court grant  
6 his motion, vacate the sentence, and re-sentence him.

7 Respectfully submitted,

8  
9 Dated: June 13, 2016

*s/ Benjamin P. Davis*

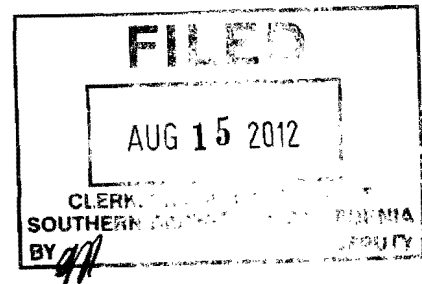
**Benjamin P. Davis**

**Kara Hartzler**

Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Dalton

# EXHIBIT A





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10	UNITED STATES OF AMERICA,	)	Case No. <u>12CR3367-BEN</u>
		)	
11	Plaintiff,	)	<u>I N F O R M A T I O N</u>
		)	
12	v.	)	Title 18, U.S.C., Secs. 922(g)(1)
		)	and 924(a)(2) - Felon in
13	JEREMY ADAM DALTON,	)	Possession of a Firearm; Title 18,
		)	U.S.C., Sec. 924(d)(1) and
14	Defendant.	)	Title 28, U.S.C., Sec. 2461(c) -
		)	Criminal Forfeiture
15		)	

The United States Attorney charges:

On or about June 7, 2012, within the Southern District of California, defendant JEREMY ADAM DALTON, being a person who had previously been convicted in a court, that is, the Superior Court of Ohio, County of Ohio, of a crime punishable by imprisonment for a term exceeding one year, that is, on or about July 7, 2008, of Possession of Cocaine, in violation of Ohio Revised Code Section 2925.11(A)(C)(4)(b), did knowingly and unlawfully possess in and affecting interstate commerce, to wit: one Glock, model 23, .40 caliber, pistol, bearing serial number BDB110US; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

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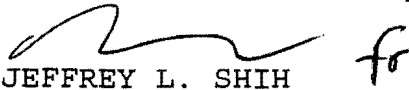
JLS(RKJ):nlv:8/14/12

FORFEITURE ALLEGATION

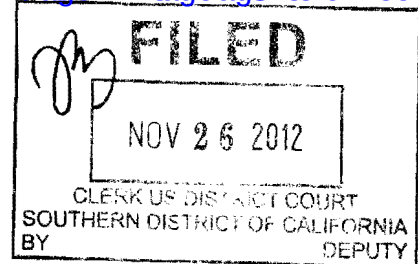
Upon conviction of the offense alleged in this Information, defendant JEREMY ADAM DALTON shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d)(1), and Title 28, United States Code, Section 2461(c), the firearm involved, to wit: one Glock, model 23, .40 caliber, pistol, bearing serial number BDB110US; in violation of Title 18, United States Code, Section 924(d)(1), and Title 28, United States Code, Section 2461(c).

DATED: 8/15/12.

LAURA E. DUFFY  
United States Attorney

  
JEFFREY L. SHIH  
Assistant U.S. Attorney

# **EXHIBIT B**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10	UNITED STATES OF AMERICA,	)	Case No. <u>12CR3367-BEN</u>
11	Plaintiff,	)	<u>I N F O R M A T I O N</u>
12	v.	)	(SUPERSEDING)
13	JEREMY ADAM DALTON,	)	Title 18, U.S.C., Secs. 922(g)(1)
14	Defendant.	)	and 924(a)(2) - Felon in
15		)	Possession of Firearms and
		)	Ammunition; Title 18, U.S.C., Sec.
		)	924(d)(1) and Title 28, U.S.C.,
		)	Sec. 2461(c) - Criminal Forfeiture

The United States Attorney charges:

On or about June 7, 2012, within the Southern District of California, defendant JEREMY ADAM DALTON, being a person who had previously been convicted in a court, that is, the Superior Court of Ohio, County of Ohio, of a crime punishable by imprisonment for a term exceeding one year, that is, on or about July 7, 2008, of Possession of Cocaine, in violation of Ohio Revised Code Section 2925.11(A)(C)(4)(b), did knowingly and unlawfully possess, in and affecting interstate commerce, to wit:

- 1) 681 rounds of assorted ammunition;
- 2) one Glock, model 23, .40 caliber pistol, serial number BDB110US;
- 3) one Taurus, model 608, .357 caliber revolver, serial number BT652166;
- 4) one Llama (Gabilondo & CIA), 22 caliber pistol, serial number A33354;

1 5) one Taurus, model PT140 Millennium Pro, .40 caliber  
2 pistol, serial number SYJ45735;

3 6) one Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber  
4 revolver, serial number DM104710;

5 7) one Walther, model P22, .22 caliber pistol, serial  
6 number N017274;

7 8) one Colt, model DELTA ELITE, .10 caliber pistol, serial  
8 number 10SS0832;

9 9) one Glock, model 17, .9 caliber pistol, serial number  
10 KNP396;

11 in violation of Title 18, United States Code, Sections 922(g)(1) and  
12 924(a)(2).

13 FORFEITURE ALLEGATION

14 Upon conviction of the offense alleged in this Information,  
15 defendant JEREMY ADAM DALTON shall forfeit to the United States,  
16 pursuant to Title 18, United States Code, Section 924(d)(1), and  
17 Title 28, United States Code, Section 2461(c), the firearms and  
18 ammunition involved, to wit:

19 1) 681 rounds of assorted ammunition;

20 2) one Glock, model 23, .40 caliber pistol, serial number  
21 BDB110US;

22 3) one Taurus, model 608, .357 caliber revolver, serial  
23 number BT652166;

24 4) one Llama (Gabilondo & CIA), ZZ caliber pistol, serial  
25 number A33354;

26 5) one Taurus, model PT140 Millennium Pro, .40 caliber  
27 pistol, serial number SYJ45735;

28 6) one Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber  
revolver, serial number DM104710;

7) one Walther, model P22, .22 caliber pistol, serial  
number N017274;

8) one Colt, model DELTA ELITE, .10 caliber pistol, serial  
number 10SS0832;

9) one Glock, model 17, .9 caliber pistol, serial number  
KNP396;

1 in violation of Title 18, United States Code, Section 924(d)(1), and  
2 Title 28, United States Code, Section 2461(c).

3 DATED: 11/26/12.

4 LAURA E. DUFFY  
5 United States Attorney

6   
7 RANDY K. JONES  
8 Assistant U.S. Attorney  
9  
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# EXHIBIT C

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, .  
 .  
 PLAINTIFF, . NO. 12-CR-3367  
 .  
 V. . APRIL 8, 2013  
 .  
 JEREMY ADAM DALTON, . 10:24 A.M.  
 .  
 DEFENDANT. . SAN DIEGO, CALIFORNIA  
 . . . . .

TRANSCRIPT OF SENTENCING WITH A PRESENTENCE REPORT  
BEFORE THE HONORABLE ROGER T. BENITEZ  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: U.S. ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF CALIFORNIA  
BY: RANDY JONES, ESQ.  
880 FRONT STREET, ROOM 6293  
SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANT: LAW OFFICE OF VIKAS BAJAJ  
BY: VIKAS BAJAJ, ESQ.  
225 BROADWAY, SUITE 2200  
SAN DIEGO, CALIFORNIA 92101

COURT REPORTER: DEBORAH M. O'CONNELL, RPR, RMR, CSR  
333 WEST BROADWAY, SUITE 420  
SAN DIEGO, CALIFORNIA, 92101

REPORTED BY STENOTYPE, TRANSCRIBED BY COMPUTER



1 SAN DIEGO, CALIFORNIA, APRIL 8, 2013, 10:24 A.M.

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3  
4 THE CLERK: NINE ON CALENDAR, CASE NO. 12-CR-3367,  
5 USA VS. JEREMY ADAM DALTON, SENTENCING WITH A PRESENTENCE  
6 REPORT.

7 MR. JONES: GOOD MORNING, YOUR HONOR. RANDY JONES,  
8 FOR THE UNITED STATES.

9 MR. BAJAJ: GOOD MORNING, YOUR HONOR. VIKAS BAJAJ,  
10 ON BEHALF OF JEREMY DALTON, WHO IS PRESENT.

11 THE COURT: THIS MATTER IS SET FOR SENTENCING TODAY.  
12 I NOTE UNDER *BOOKER*, THE GUIDELINES ARE ADVISORY. I WILL  
13 IMPOSE SENTENCE BASED ON 3553(A) FACTORS.

14 I APOLOGIZE. I'M TAKING A LITTLE LONG. I'M TRYING TO  
15 REREAD THE PRE-SENTENCE REPORT. BUT I HAVE SO MANY SECTIONS  
16 THAT WERE UNDERLINED, IT'S TAKING ME --

17 COUNSEL, I'M LEANING TOWARDS IMPOSING THE HIGH END OF THE  
18 GUIDELINE RANGE IN THIS CASE. AND, FRANKLY, I THINK HE'S  
19 PROBABILITY LUCKY THAT I IMPOSE A SENTENCE WITHIN THE RANGE  
20 THAT HAS BEEN AGREED TO. IT WOULDN'T TAKE ME MUCH TO VARY UP  
21 FROM THAT, JUST SO THAT YOU KNOW.

22 MR. BAJAJ: I UNDERSTAND, YOUR HONOR. AND I'M  
23 ASSUMING THE CONCERNS THAT THE COURT HAS ARE FOCUSED ON THE  
24 PRESENCE OF NARCOTICS IN THE CASE?

25 THE COURT: YOU KNOW WHAT, IT'S NOT NECESSARILY

1 FOCUSED ON THAT. IT'S ACTUALLY -- LIKE I SAID, LOOK AT HOW  
2 MUCH TIME I JUST SPENT TRYING TO GO BACK THROUGH THE UNDERLYING  
3 PORTIONS OF -- I MEAN, FIRST OF ALL, I KNOW THAT DRUGS AND GUNS  
4 ARE AN AWFUL COMBINATION, OKAY. AND ALTHOUGH I AM NOT ASHAMED  
5 TO ADMIT THAT I BELIEVE THAT WE SHOULD INTERPRET THE SECOND  
6 AMENDMENT AS BROADLY AS WE INTERPRET THE FIRST AMENDMENT, I  
7 ALSO UNDERSTAND THAT THERE ARE LIMITS. AND THERE ARE THINGS  
8 ABOUT THE SECOND AMENDMENT THAT -- OR THE CONDUCT OF THIS  
9 DEFENDANT, WHICH, IN MY OPINION, SORT OFF DEFEAT THE WHOLE  
10 PURPOSE OF THE SECOND AMENDMENT.

11 I MEAN, IT IS NOT ONLY THE NUMBER OF WEAPONS THAT HE  
12 OWNED, BECAUSE, YOU KNOW, I DON'T THINK THERE IS ANYTHING IN  
13 THE SECOND AMENDMENT THAT SHOULD LIMIT PEOPLE'S RIGHTS TO OWN  
14 HOWEVER MANY WEAPONS THEY WANT. BUT IT'S THE NATURE OF THE  
15 WEAPONS, AND THE NATURE OF WHERE THE WEAPONS WERE STORED, HOW  
16 THEY WERE CONCEALED, THE ADDITION OF THE DRUGS IN THE DRUG  
17 CONTAINERS, THE FACT THAT THIS GENTLEMAN HAD A T-SHIRT WITH THE  
18 WORD "POLICE" IN BOLD YELLOW LETTERS ACROSS IT. THE FACT THAT  
19 HE HAD DAGGERS. NOW, YOU KNOW, I DON'T KNOW THAT THE SECOND  
20 AMENDMENT PROTECTS DAGGERS. MAYBE IT DOES.

21 BUT, YOU KNOW, I DON'T KNOW THAT I KNOW VERY MANY PEOPLE  
22 WHO HAVE DAGGERS. A KNIFE WITH BRASS KNUCKLES, A LOCK-PICKING  
23 KIT. NOW -- A PAIR OF HANDCUFFS, A PULL-OVER MASK WITH A  
24 SKELETON FACE ON IT, A MILITARY BALLISTIC VEST. I DON'T KNOW,  
25 I COULD JUST GO ON AND ON. I MEAN, IF YOU READ THIS

1 PRE-SENTENCE REPORT, I DON'T KNOW IF MR. DALTON WAS PREPARED TO  
2 GO TO WAR AGAINST THE UNITED STATES OR MEXICO OR SOMEBODY ELSE,  
3 BUT WHATEVER IT WAS HE WAS DOING IS CERTAINLY OUTSIDE OF WHAT I  
4 WOULD CONSIDER TO BE THE REALM OF -- I MEAN, I WOULD IMAGINE  
5 THAT IF YOU EVEN ASK THE PRESIDENT OF THE NRA WHETHER HE WOULD  
6 THINK THIS TO BE NORMAL BEHAVIOR, I SUSPECT THE ANSWER WOULD  
7 PROBABLY BE NO. I MAY BE WRONG. BUT THERE IS SO MUCH HERE, I  
8 COULD GO ON. AND I DON'T HAVE TIME TO DO IT. IT'S VERY  
9 TROUBLING TO ME.

10 MR. BAJAJ: AND I UNDERSTAND THE COURT'S CONCERNS.  
11 AND I WOULD BE REMISS IF I INDICATED THAT I DID NOT PREDICT  
12 SOME SORT OF THIS SENTIMENT BEING PRODUCED THIS MORNING. BUT I  
13 WILL INDICATE TO THE COURT THAT MY CLIENT HAS ATTEMPTED  
14 COOPERATION WITH THE UNITED STATES AND PROVIDED ALL THE  
15 INFORMATION THAT HE POSSIBLY COULD IN THE TWO --

16 THE COURT: I HAVE TAKEN THAT INTO CONSIDERATION,  
17 COUNSEL, SO YOU KNOW. I'VE CONSIDERED THAT, WHICH IS WHY I  
18 SAID, IT WOULDN'T TAKE ME MUCH TO GO ABOVE THE GUIDELINE RANGE.  
19 BUT I'VE CONSIDERED ALL OF THAT, WHICH IS WHY I'M WILLING TO  
20 ADHERE TO THE AGREEMENT THAT HAS BEEN REACHED, BUT NOT GO DOWN  
21 TO THE LOW END OF THE GUIDELINES, OKAY.

22 MR. BAJAJ: I UNDERSTAND. BUT THE REASON WHY I WAS  
23 MAKING REFERENCE TO THE TWO MEETINGS OF ATTEMPTED COOPERATION,  
24 OR THE TWO COOPERATION MEETINGS, AS I WOULD TERM THEM, IS  
25 BECAUSE WE'VE TALKED AT LENGTH AND AD NAUSEAM WITH A

1 REPRESENTATIVE OF THE ATF, AGENT CONNOLLY, WHO, I BELIEVE, HAS  
2 NOW BEEN PUT OUT TO OHIO, INTERESTINGLY ENOUGH.

3 THE COURT: I'M SORRY, HE IS NOW WHAT?

4 MR. JONES: HE'S IN BALTIMORE.

5 MR. BAJAJ: HE IS IN BALTIMORE.

6 THE COURT: I GOT YOU, I UNDERSTAND.

7 MR. BAJAJ: YEAH, HE'S STATIONED OUT IN BALTIMORE.

8 AND ALSO LOCAL LAW ENFORCEMENT, AGENT DAVIES, WITH THE ATF  
9 LIAISON DEPARTMENT. AND A REAL PART OF THE MAGNITUDE AND  
10 MAJORITY OF THE MEETING WAS IN REGARDS TO THE ITEMS THAT THE  
11 COURT JUST REFERENCED IN ORDER TO DISPEL THE NOTION THAT  
12 MR. DALTON WAS, IN FACT, PLANNING, PERHAPS, A ROBBERY OR  
13 SOMETHING OF THAT NATURE. THE EXPLANATION THAT WAS GIVEN TO  
14 THE AGENTS IN OUR PRESENCE WAS ONE THAT AT FIRST BLUSH, WHEN  
15 YOU SEE HIM, WAS SOMEWHAT COMICAL. BUT AT THE SECOND --

16 THE COURT: WAS IT A VIDEO -- THEY WERE GOING TO DO A  
17 VIDEO?

18 MR. BAJAJ: THAT'S CORRECT. AND THERE WAS ALSO --

19 THE COURT: AND YOU CAN DO A VIDEO WITH A WHOLE LOT  
20 LESS THAN WHAT MR. DALTON HAD IN HIS POSSESSION, BELIEVE ME.

21 MR. BAJAJ: AND THERE ARE SOME THINGS, YOUR HONOR,  
22 ABOUT MR. DALTON AND HIS HISTORY THAT ARE NAIVE, TO SAY THE  
23 VERY LEAST, ILL-PLANNED, AND ILL-EXECUTED. THE EXPLANATION OF  
24 THE RAP VIDEO, WHILE IT IS COMICAL AT FIRST BLUSH, IS A  
25 REALISTIC EXPLANATION. I BELIEVE THE AGENTS WHO WERE INVOLVED

1 IN THE INVESTIGATION SATISFIED THEMSELVES THAT WHILE IT WAS NOT  
2 THE BRIGHTEST OF ALL IDEAS, THAT MR. DALTON WAS IN NO WAY,  
3 SHAPE, OR FORM PLANNING TO USE ANY OF THE INDICIA THAT THE  
4 COURT HAD REFERENCED FOR THE FURTHERANCE OF ANY CRIMINAL  
5 ACTIVITY.

6 THE MASKS THAT THE COURT MADE REFERENCE TO WERE MASKS THAT  
7 HE WOULD USE WITH A FEW OF HIS BUDDIES THAT HE HAD GATHERED  
8 TOGETHER IN A MOTORCYCLE RIDING GROUP, AND THEY WOULD PUT THESE  
9 MASKS ON AND FILM THEMSELVES. AND THERE WAS INDICIA IMPOUNDED,  
10 CORROBORATING THE FACT THAT THEY, IN FACT, DID THAT. IS IT  
11 SAFE, IS IT PRACTICAL, IS IT SOMETHING THAT WE EXPECT --

12 THE COURT: WAIT, THEY WORE THESE SKULL-FACED COVERED  
13 MASKS WHILE RIDING MOTORCYCLES?

14 MR. BAJAJ: THAT'S CORRECT, YOUR HONOR. NOW I DIDN'T  
15 BELIEVE -- I SHOULDN'T SAY --

16 THE COURT: I ASSUME THESE ARE DIRT BIKES?

17 MR. BAJAJ: THESE ARE MOTORCYCLES THAT ARE ACTUALLY  
18 ON THE PUBLIC HIGHWAYS. THEY'RE ROAD BIKES.

19 THE COURT: ON PUBLIC HIGHWAYS, OKAY. I SEE. SO  
20 IT'S SORT OF LIKE, INSTEAD OF THE HELLS ANGELS OR THE MONGOLS,  
21 IT'S, WHAT, THE SKELETONS? YOU KNOW, THIS IS GETTING MORE AND  
22 MORE FAR-FETCHED.

23 MR. BAJAJ: YOU KNOW, AND I DIDN'T -- I CAN'T SAY  
24 THAT I HAD A FULL BELIEF IN MY CLIENT'S RENDITION OF WHAT  
25 ACTUALLY OCCURRED UNTIL I SAW PEOPLE ON THE HIGHWAY WEARING THE

1 VERY SAME THINGS ON MY WAY TO SAN CLEMENTE THE OTHER DAY. I  
2 WILL INDICATE TO THE COURT, HOWEVER, THAT MR. DALTON'S CASE IS  
3 SOMEWHAT OF A PARADOX. ON THE ONE SIDE, YOUR HONOR, HE IS A  
4 26-YEAR-OLD INDIVIDUAL, WHO HAS AN ENORMOUS AMOUNT OF FAMILY  
5 SUPPORT. HIS FAMILY IS INVOLVED IN SUBSTANTIAL CHARITABLE  
6 ORGANIZATIONS. THEY'VE DEDICATED UPWARDS OF \$4 MILLION SINCE  
7 1999 TOWARDS A BUILDING OF HOSPITALS FOR WOMEN AND CHILDREN IN  
8 FOREIGN COUNTRIES, INCLUDING, BUT NOT LIMITED TO, GUATEMALA.

9 HIS FATHER IS PRESENT IN COURT AS WELL. IF HE CAN RAISE  
10 HIS RIGHT HAND. THAT'S ARTHUR RAY DALTON. HE'S FLOWN IN FROM  
11 OHIO, AS A REPRESENTATIVE OF THE FAMILY, TO INDICATE HIS  
12 SUPPORT, WHICH IS SUBSTANTIAL AND PERMANENT ON BEHALF OF HIS  
13 FAMILY.

14 HE HAS DONE THE RIGHT THINGS SINCE THE ARREST. HE HAS NOT  
15 SUFFERED ONE VIOLATION IN ANY WAY, VIOLATING THE ORDER OF  
16 PRETRIAL RELEASE. HE HAS RE-ENGAGED HIMSELF IN CHARITABLE  
17 ORGANIZATIONS THAT HE HAS BEEN A PART OF HIS ENTIRE LIFE. HE  
18 HAS REKINDLED THE CONNECTIONS THAT HAVE BEEN VERY STRONG WITH  
19 HIS FAMILY IN OHIO, SPENDING A SIGNIFICANT AMOUNT OF TIME WITH  
20 HIS NIECES AND NEPHEWS AND HIS EXTENDED FAMILY.

21 HIS CASE IS A VERY UNIQUE CASE. BECAUSE UNLIKE MANY  
22 PEOPLE THAT WE DEAL WITH IN COURT, MR. DALTON DOES HAVE THE  
23 TOOLS TO TURN THIS AROUND AND TO REHABILITATE HIMSELF AND TO  
24 MAKE SURE HE CAN, A, TAKE CARE OF THE NARCOTICS, USE AND ABUSE,  
25 WHICH HAS BEEN PRESENT FOR OVER A DOZEN YEARS IN HIS LIFE,

1 STARTING OFF, AS THE COURT ALLUDED TO, A COUPLE CASES AGO, WITH  
2 THE USE OF MARIJUANA, GRADUATING TO COCAINE, OXYCODONE, AND A  
3 MYRIAD OF OPIATES THAT WERE FOUND DURING THE EXECUTION OF THE  
4 SEARCH WARRANT IN HIS APARTMENT HERE IN SAN DIEGO.

5 HE IS AN INDIVIDUAL WHO HAS SUFFERED SIGNIFICANTLY FROM  
6 NARCOTICS ABUSE. AND IT'S SOMETHING, UNFORTUNATELY, HIS FAMILY  
7 HAS HAD TO DEAL WITH, SOMETHING HE WAS EMBARRASSED ABOUT, BUT  
8 SOMETHING THE FAMILY NOW BELIEVES THAT HE NEEDS SUPPORT AND  
9 HELP IN ADDRESSING. SO WE WOULD FURTHER THE PROBATION  
10 DEPARTMENT'S RECOMMENDATION FOR THE RDAP PROGRAM. WHATEVER THE  
11 COURT SENTENCE MAY BE, I THINK IT'S SOMETHING THAT COULD HELP.

12 HE HAS STRONG FAMILY TIES. HE'S FULLY EMPLOYED. HE WAS  
13 MAKING DECENT MONEY UP UNTIL THE TIME OF HIS ARREST. THE  
14 CONSEQUENCE OF THE ARREST IS THAT HE HAS HAD TO, IN ESSENCE,  
15 DIVULGE HIS INTEREST IN THE CORPORATION, RADIOGRAPHICS LIMITED  
16 HERE. IT IS A MEDICAL SUPPLY COMPANY THAT HE WAS BROUGHT OUT  
17 HERE IN 2010 TO START WITH HIS PARTNER, WHO WAS THE ULTIMATE  
18 RECIPIENT OF THE WEAPONS THAT WERE ACTUALLY INSIDE THE STORAGE  
19 UNIT. THIS INFORMATION WAS GIVEN TO THE AGENTS AT THE SECOND  
20 DEBRIEF THAT WE HAD AT THE END OF NOVEMBER LAST YEAR.

21 HE HAS THE TOOLS TO TURN IT AROUND, YOUR HONOR. HE HAS  
22 THE TOOLS TO SEEK THE PROPER REHABILITATION, TO BE -- CONTINUE  
23 BEING A BREAD-WINNING MEMBER OF SOCIETY AND A PERSON WHO  
24 CONTRIBUTES SIGNIFICANTLY.

25 HIS OWN DONATIONS TO THE CHARITABLE ORGANIZATIONS ARE

1 PROBABLY SOMEWHERE UPWARDS OF 60 TO 65 PERCENT OF EACH PAYCHECK  
2 THAT HE HAS HAD SINCE THIS CASE HAS COME AROUND, HAS GONE  
3 TOWARDS THE CHARITABLE ORGANIZATIONS THAT HIS FAMILY SUPPORTS.

4 HE HAS ALSO SPENT A SIGNIFICANT AMOUNT OF TIME WITH THE  
5 CHARITABLE DONATIONS, FEEDING THE POOR IN THE AREA IN OHIO  
6 WHERE HE LIVES. THE COURT HAS READ ALL THE FILINGS, ALL THE  
7 LETTERS OF SUPPORT, WHICH ARE SUBSTANTIAL, WHICH ARE  
8 SIGNIFICANT, AND I THINK SHOULD IN MANY WAYS INFLUENCE THE  
9 COURT'S IMPRESSION OF WHO MR. DALTON IS AS A PERSON OTHER THAN  
10 THE FIREARMS THAT WE'RE DEALING WITH TODAY.

11 THE ONLY ADDITIONAL RECOMMENDATION WE WOULD HAVE, YOUR  
12 HONOR, FOR A REQUEST, WOULD BE FOR PLACEMENT IN THE  
13 NORTHEASTERN REGION SO HE CAN BE CLOSE TO HIS FAMILY, HIS  
14 EXTENDED FAMILY IN OHIO. AND I KNOW MR. DALTON WOULD ALSO LIKE  
15 TO ADDRESS THE COURT.

16 THE COURT: ALL RIGHT, MR. DALTON, YOU HAVE A RIGHT  
17 TO ADDRESS THE COURT BEFORE I IMPOSE SENTENCE. IS THERE  
18 ANYTHING YOU WANT TO SAY?

19 THE DEFENDANT: YES, YOUR HONOR. I WOULD LIKE TO  
20 START BY APOLOGIZING, OBVIOUSLY, TO THE COURT AND TO MY FAMILY.  
21 THESE CHARGES ARE NOT REPRESENTATIVE OF WHO I AM AS A PERSON.  
22 OBVIOUSLY, IT'S A VERY LARGE MISTAKE, AND I TAKE COMPLETE --  
23 ACCEPT COMPLETE RESPONSIBILITY FOR IT. IT IS NOBODY'S FAULT  
24 BUT MY OWN FOR BEING IN THIS SITUATION. I NEVER INTENDED TO  
25 HURT ANYBODY OR CAUSE ANYBODY HARM. OBVIOUSLY, I'VE CAUSED A



1 LOT OF PEOPLE EMOTIONAL HARM, BUT I NEVER MEANT TO CAUSE  
2 ANYBODY ANY PHYSICAL HARM.

3 I DO BELIEVE THAT MY FAMILY AND MY STRONG FAMILY UNIT -- I  
4 HAVE THE TOOLS TO TURN THIS SITUATION AROUND AND NOT BE A  
5 BURDEN ON SOCIETY BUT TRY TO BE A PRODUCTIVE MEMBER OF SOCIETY.

6 THE COURT: OKAY. DOES THE GOVERNMENT HAVE ANYTHING?

7 MR. JONES: YES, YOUR HONOR. YOUR HONOR, THE  
8 GOVERNMENT AGREES THAT THIS CASE IS QUITE A PARADOX. THE  
9 DEFENDANT HAS A -- AS YOU'VE HEARD, GREAT FAMILY SUPPORT. HE  
10 IS WELL OFF FINANCIALLY. HE HAS SOCIO-ECONOMIC FACTORS THAT  
11 THE COURT DOESN'T NORMALLY SEE IN THESE TYPES OF CASES. BUT AT  
12 THE SAME TIME, WHAT IS TROUBLING IS NOT ONLY THE AMOUNT OF  
13 WEAPONS AND AMMUNITION AND THE DRUGS THAT ARE INVOLVED IN THE  
14 CASE, BUT THE DEFENDANT ALSO HAD A PRIOR RECORD, A CRIMINAL  
15 RECORD, WHICH CONSISTS OF FELONIOUS ASSAULT AND DRUG  
16 TRAFFICKING OR DRUG POSSESSION.

17 AND WITH RESPECT TO ALL THE OTHER ITEMS THAT WERE FOUND IN  
18 THE STORAGE UNIT IN HIS APARTMENT, AND IN SPEAKING WITH HIM, IN  
19 TRYING TO GET AN EXPLANATION, YOU KNOW, THE EXPLANATION HE'S  
20 GIVEN, I THINK WE ARE GIVING HIM THE BENEFIT OF THE DOUBT. BUT  
21 ONE COULD ALSO SAY THAT IT HAD SOMETHING TO DO WITH THIS NOTION  
22 OF WANTING TO BE SOME SORT OF GANGSTER, SORT OF A WANNA-BE  
23 GANGSTER. HE WAS HANGING OUT WITH THE WRONG FOLKS, FOLKS WHO  
24 WERE INVOLVED IN SOME VERY SERIOUS ACTIVITY.

25 AND FOR THAT REASON, THE GOVERNMENT FINDS THIS CASE TO BE

1 SOMEWHAT TROUBLING AND CONCERNING. BUT HAVING SAID ALL OF  
2 THAT, AS WE SAID BEFORE, WE'VE GIVEN HIM THE BENEFIT OF THE  
3 DOUBT, AND THAT'S WHY WE'RE MAKING THE RECOMMENDATION OF THE  
4 LOW END OF THE GUIDELINES.

5 THE COURT: PROBATION HAVE ANYTHING?

6 PROBATION OFFICER: I HAVE NO ADDITIONAL INFORMATION,  
7 YOUR HONOR.

8 THE COURT: BOY, YOU KNOW, THIS IS JUST SUCH A  
9 TROUBLING CASE. IT SEEMS THAT MR. DALTON DOES HAVE FAMILY  
10 SUPPORT. AND UNLIKE SO MANY PEOPLE THAT APPEAR BEFORE ME, THAT  
11 DON'T HAVE ANY ASSETS OR FINANCIAL RESOURCES TO RELY ON, I LOOK  
12 AT HIS FINANCIAL STATEMENTS, FOR EXAMPLE, AND NOW I HEAR ABOUT  
13 HIS FAMILY. APPARENTLY, HE HAS A WEALTHY FAMILY, AND WHICH  
14 LEADS ME TO CONCLUDE THAT MONEY AND FINANCIAL STATUS REALLY  
15 HAVE VERY LITTLE BEARING ON CRIMINAL BEHAVIOR.

16 YOU KNOW, BESIDES THE THINGS THAT I HAD POINTED OUT --  
17 YEAH, I NOTED IN HIS PAST CRIMINAL HISTORY, HE HAD A FELONIOUS  
18 ASSAULT AT THE AGE OF 19. AND THEN, AT THE AGE OF 21, HE WAS  
19 CONVICTED OF POSSESSION OF COCAINE. AND WHAT I NOTED ABOUT  
20 THAT, THAT I THOUGHT WAS INTERESTING, WAS NOT ONLY THAT HE WAS  
21 IN POSSESSION OF COCAINE, BUT I NOTICED THAT HE HAD TO BE  
22 TASERED TWICE IN ORDER TO BRING MR. DALTON INTO COMPLIANCE. I  
23 HAVE NEVER BEEN TASERED, BUT FROM WHAT I'VE HEARD, IT'S NOT A  
24 PLEASANT THING TO GO THROUGH. AND YOU HAD TO GO THROUGH IT  
25 TWICE IN ORDER TO BE SUBDUED.

1           YOU KNOW, WHEN YOU PUT ALL THIS TOGETHER, YOU PUT -- HERE  
2 MR. DALTON, AS HE STANDS BEFORE ME -- AND HE REALLY SEEMS TO BE  
3 A NICE MAN, YOU KNOW, REMORSEFUL AND ARTICULATE, AND SO ON.  
4 BUT HIS BEHAVIOR IS SO, SO, SO OUT OF THE ORDINARY, SO STRANGE.  
5 AGAIN, IT IS NOT THE NUMBER OF WEAPONS THAT HE HAD. THAT  
6 DOESN'T BOTHER ME AT ALL, UNLIKE SOME PEOPLE, WHO WOULD REALLY  
7 GET INTO A TIZZY OVER THAT. BUT IT'S THE MANNER OF THE  
8 POSSESSION OF THE WEAPONS AND THE OTHER THINGS THAT GO WITH IT  
9 THAT CAUSE ME SUCH A CONCERN.

10           NOW I NOTED -- SOMETHING ELSE I FOUND INTERESTING ABOUT  
11 THIS CASE. I NOTED THAT HE STARTED USING MARIJUANA WHEN HE WAS  
12 IN COLLEGE. AND THEN, I GUESS, HE SORT OF HAS GRADUATED -- I  
13 NOTED, INTERESTINGLY ENOUGH, BY THE WAY, THAT THE 2007  
14 CONVICTION FOR POSSESSION OF COCAINE, I THINK THAT'S THE ONE  
15 THAT RESULTED FROM HIM BEING IN A VEHICLE WITH SOMEONE ELSE AND  
16 THEY WERE SMOKING MARIJUANA IN THE VEHICLE. AND THE SMOKE WAS  
17 COMING OUT OF THE VEHICLE.

18           AND, APPARENTLY, THE OFFICERS -- SOME LAW ENFORCEMENT  
19 OFFICERS NOTICED THE PLUME OF SMOKE COMING OUT OF THE VEHICLE,  
20 SO THEY ATTEMPTED TO ARREST HIM. AND THEN HE TRIED TO RUN AWAY  
21 AND WOUND UP BEING TASERED TWICE, WHICH SIMPLY GOES TO SHOW  
22 THAT NOTHING GOOD COMES OUT OF SMOKING MARIJUANA, NOT JUST THE  
23 FACT THAT YOU'RE LIKELY TO BECOME ADDICTED TO SOMETHING ELSE,  
24 BUT ALSO THE POSSIBILITY THAT YOU COULD WIND UP BEING TASERED  
25 AND ARRESTED FOR RESISTING ARREST, ETC.

1 IT'S AN INTERESTING -- IT'S JUST A VERY INTERESTING,  
2 INTERESTING CASE. ALL IN ALL, THOUGH, I THINK WHEN I LOOK AT  
3 THE 3553(A) FACTORS, I DON'T KNOW THAT THIS WILL REALLY, REALLY  
4 WORK, BUT I THINK THAT, YOU KNOW, I JUST CAN'T GO ALONG WITH  
5 THE LOW END OF THE GUIDELINE RANGE. THERE IS SOMETHING ABOUT  
6 THIS CASE, AND I CAN'T QUITE REALLY -- AT THE RISK OF HAVING  
7 JUDGE KOZINSKI, MY GOOD FRIEND, TELL ME ONCE AGAIN THAT I  
8 CANNOT USE MY OLFACTORY NERVE TO DECIDE WHAT THE LAW IS, THERE  
9 IS SOMETHING ABOUT THIS CASE THAT JUST DOESN'T SMELL RIGHT.  
10 AND, I GUESS -- NO PUN INTENDED GIVEN THAT I WAS JUST TALKING  
11 ABOUT THE PLUME OF SMOKE OF MARIJUANA.

12 BUT IN ANY EVENT, THERE IS SOMETHING ABOUT THIS CASE THAT  
13 IS TROUBLING, AND I CAN'T QUITE PUT MY FINGER ON IT.

14 WHAT I CAN SAY IS, THAT AFTER LOOKING AT ALL THE 3553(A)  
15 FACTORS, AND TRYING TO SIFT THROUGH ALL OF THIS, AND TRYING TO  
16 FIGURE OUT WHAT MAKES SENSE, I'M SATISFIED THAT MY TENTATIVE IS  
17 APPROPRIATE, STILL HONORING THE AGREEMENT OF THE PARTIES, BUT  
18 YET IMPOSING A SENTENCE THAT I HOPE, HOPE WILL ACT AS A FURTHER  
19 DETERRENT.

20 SO I'LL GO THROUGH THE GUIDELINE CALCULATIONS. THESE ARE  
21 THE GUIDELINE CALCULATIONS THAT I BELIEVE WERE AGREED TO: THIS  
22 IS A BASE OFFENSE LEVEL OF 20, INCREASED BY FOUR LEVELS, UNDER  
23 2K2.1(B)(1)(B). THE GOVERNMENT AGREED TO A THREE-LEVEL  
24 REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY. HE HAS A CRIMINAL  
25 HISTORY SCORE 3; CRIMINAL HISTORY CATEGORY 2. RESULTS IN AN

1 ADJUSTED OFFENSE LEVEL OF 21, WITH A GUIDELINE RANGE OF 41 TO  
2 51 MONTHS.

3 AFTER CONSIDERING ALL THE 3553(A) FACTORS, I'M SATISFIED  
4 THAT 51 MONTHS IS REASONABLE AND SUFFICIENT, BUT NOT GREATER  
5 THAN NECESSARY. SO I'LL REMAND HIM TO THE CUSTODY OF BUREAU OF  
6 PRISONS FOR A PERIOD OF 51 MONTHS.

7 NOW AGAIN, LET ME JUST SAY WHAT I SAID A FEW MINUTES AGO.  
8 IF CONGRESS REALLY, REALLY, REALLY, REALLY IS SERIOUS ABOUT  
9 TRYING TO MINIMIZE GUN VIOLENCE, YOU KNOW, THEY REALLY SHOULD  
10 SERIOUSLY THINK ABOUT INCREASING THE PERIOD OF SUPERVISED  
11 RELEASE THAT IS AVAILABLE TO US. BECAUSE IN THE END -- HERE  
12 IS -- WHAT I DO WHEN I IMPOSE SENTENCE, I LOOK AT TWO FACTORS  
13 THAT I THINK ARE REALLY, REALLY IMPORTANT IN DECIDING WHAT A  
14 SENTENCE SHOULD BE. NO. 1, WHAT CAN WE DO TO DETER THIS  
15 INDIVIDUAL AND OTHER INDIVIDUALS FROM ENGAGING IN CRIMINAL  
16 BEHAVIOR, CAUSING THEM TO RETURN TO A LAW-ABIDING LIFE?

17 AND WE CAN -- AND THE SECOND ONE IS PROTECTION OF THE  
18 PUBLIC. THOSE TWO THINGS I CALL THE CONJOINED TWINS. BECAUSE  
19 I COULD IMPOSE A LESSER PERIOD OF CUSTODIAL SENTENCE TO BEGIN  
20 WITH IF I HAVE A LONGER PERIOD OF SUPERVISED RELEASE AT THE  
21 TAIL END THAT WILL ALLOW ME TO MAKE SURE THAT THIS INDIVIDUAL,  
22 A, DOESN'T CAUSE HARM TO THE PUBLIC AND IS RETURNING TO A  
23 LAW-ABIDING LIFE.

24 SO I CAN IMPOSE A LESSER TERM UP FRONT, WITH LONGER  
25 SUPERVISED RELEASE. OR IF I DON'T HAVE A LONG PERIOD OF

1 SUPERVISED RELEASE, THEN, YOU KNOW, I'M CALLED UPON TO IMPOSE A  
2 HIGHER SENTENCE AT THE BEGINNING. THAT'S THE WAY I SEE THOSE  
3 TWO FACTORS WORKING.

4 NOW, AGAIN, IF CONGRESS IS SERIOUS ABOUT MINIMIZING GUN  
5 VIOLENCE, WELL, HERE IS THE WAY TO DO IT: INCREASE THE PERIOD  
6 OF SUPERVISED RELEASE THAT IS AVAILABLE TO US. IF I HAD A  
7 LONGER PERIOD OF SUPERVISED RELEASE AVAILABLE TO ME, THERE IS A  
8 POSSIBILITY THAT I WOULD IMPOSE THE 41 MONTHS THAT WAS AGREED  
9 TO BY EVERYONE, BUT I DON'T HAVE THAT. I'M LIMITED TO THREE  
10 YEARS, WHICH, IN MY OPINION, IS INSUFFICIENT.

11 BUT THAT BEING THE CASE, BEING THAT THREE YEARS IS THE MAX  
12 I CAN IMPOSE, I'LL IMPOSE A THREE-YEAR TERM OF SUPERVISED  
13 RELEASE. AS A CONDITION OF SUPERVISED RELEASE, MR. DALTON WILL  
14 OBEY ALL LAWS, INCLUDING STATE, LOCAL, AND FEDERAL.

15 HE'LL COMPLY WITH ALL STANDARD AND MANDATORY CONDITIONS OF  
16 SUPERVISED RELEASE, INCLUDING THE FOLLOWING: HE'LL PROVIDE  
17 COMPLETE DISCLOSURE OF PERSONAL, BUSINESS, FINANCIAL RECORDS TO  
18 THE PROBATION OFFICER AS REQUESTED. HE'LL PARTICIPATE IN A  
19 PROGRAM OF DRUG OR ALCOHOL ABUSE TREATMENT, INCLUDING  
20 URINALYSIS OR SWEAT PATCH TESTING AND COUNSELING, AS DIRECTED  
21 BY THE PROBATION OFFICER. AND HE'LL ALLOW FOR RECIPROCAL  
22 RELEASE OF INFORMATION BETWEEN THE PROBATION OFFICER AND THE  
23 TREATMENT PROVIDER.

24 HE'LL BE REQUIRED TO CONTRIBUTE TO THE COSTS OF SERVICES  
25 RENDERED IN AN AMOUNT TO BE DETERMINED BY THE PROBATION

1 OFFICER, BASED ON HIS ABILITY TO PAY. HE'LL REPORT ALL  
2 VEHICLES OWNED OR OPERATED, OR IN WHICH HE HAS AN INTEREST TO  
3 HIS PROBATION OFFICER.

4 HE'LL SUBMIT HIS PERSON, HIS RESIDENCE, HIS OFFICE, OR HIS  
5 VEHICLE TO A SEARCH CONDUCTED BY A UNITED STATES PROBATION  
6 OFFICER IN A REASONABLE TIME AND IN A REASONABLE MANNER, BASED  
7 UPON REASONABLE SUSPICION OF CONTRABAND OR EVIDENCE OF A  
8 VIOLATION OF A CONDITION OF RELEASE. FAILURE TO SUBMIT TO A  
9 SEARCH MAY BE GROUNDS FOR REVOCATION. AND THE DEFENDANT SHALL  
10 WARN ANY OTHER RESIDENTS THAT THE PREMISES MAY BE SUBJECT TO  
11 SEARCHES PURSUANT TO THIS CONDITION.

12 NOW JUST TO BE SURE THAT WE'RE ON THE SAME PAGE, ALSO,  
13 MR. DALTON, I'M GOING TO ORDER THAT YOU NOT OWN, POSSESS,  
14 BORROW, OR IN ANY OTHER WAY HAVE CONTROL OF ANY FIREARM, ANY  
15 FIREARM, WHATSOEVER, OR ANY AMMUNITION, OR ANY OTHER CONTROLLED  
16 WEAPON. YOU MAY NOT HAVE IN YOUR POSSESSION, NOT EVEN  
17 MOMENTARILY, YOU CAN'T EVEN HOLD IT IN YOUR HAND, A DAGGER, OR  
18 BRASS KNUCKLES, OR A PISTOL, OR SHOTGUN, OR RIFLE, OR ANYTHING  
19 OF THAT SORT. IF YOU DO, THAT WILL BE A VIOLATION OF  
20 SUPERVISED RELEASE. AND I ASSURE YOU, I'M PUTTING A LOT OF  
21 TRUST IN YOU. AS I SAID, IT WOULDN'T TAKE ME VERY MUCH TO  
22 IMPOSE A HIGHER SENTENCE THAN THE ONE I'VE IMPOSED ALREADY.

23 BUT I'M PUTTING TRUST IN YOU THAT YOU ARE THE PERSON THAT  
24 I AM TOLD THAT YOU ARE AND THAT YOU TELL ME THAT YOU ARE. IF I  
25 FIND OUT THAT YOU'RE ANYWHERE WHERE THERE IS AMMUNITION, OR ONE

1 OF THESE WEAPONS AT ANY TIME, AND YOU GET CAUGHT, YOU'RE GOING  
2 TO COME BACK TO SEE ME. AND AT THAT POINT IN TIME, I'M GOING  
3 TO IMPOSE THE HIGHEST SENTENCE THAT THE LAW ALLOWS ME TO IMPOSE  
4 FOR YOUR VIOLATION OF SUPERVISED RELEASE. IN THIS CASE, IT  
5 WILL BE THREE YEARS. DO YOU UNDERSTAND THAT?

6 THE DEFENDANT: YES, YOUR HONOR.

7 THE COURT: OKAY. SO I WANT YOU TO DO WHAT YOUR  
8 FATHER EXPECTS OF YOU, WHAT YOU SHOULD EXPECT OF YOURSELF,  
9 WHICH IS TO RETURN TO A LAW-ABIDING LIFE, WHERE YOU CAN EARN A  
10 GOOD INCOME, MAKE YOURSELF PROUD, MAKE YOUR FAMILY PROUD. AND  
11 ALL YOU HAVE TO DO IS STAY AWAY FROM GUNS, STAY AWAY FROM  
12 AMMUNITION, STAY AWAY FROM WEAPONS. AND, OF COURSE, STAY AWAY  
13 FROM DRUGS, DON'T SUBMIT DRUG TESTS THAT ARE DIRTY, ETC., ETC.

14 YOU DO ALL OF THAT, AND AT THE END OF THREE YEARS,  
15 MR. DALTON, YOU'RE GOING TO GO BACK TO HAVING A GOOD LIFE.  
16 YOU'RE A YOUNG MAN. YOU HAVE A LOT OF TIME AHEAD OF YOU,  
17 BELIEVE ME. AND LIFE CAN BE SO GOOD. AND YOU DON'T NEED  
18 DRUGS, AND YOU DON'T NEED GUNS, AND YOU DON'T NEED KNIVES, AND  
19 YOU DON'T NEED BRASS KNUCKLES IN ORDER TO HAVE A GOOD LIFE.  
20 YOU REALLY CAN.

21 NOW WITH REGARDS TO A FINE, I THINK HE HAS THE ABILITY TO  
22 PAY A FINE. PROBATION IS RECOMMENDING A FINE OF \$10,000, WHICH  
23 I BELIEVE IS REASONABLE UNDER THE CIRCUMSTANCES. I'LL ORDER  
24 THAT HE PAY A FINE OF \$10,000, PLUS \$100 SPECIAL ASSESSMENT.  
25 AND THAT WILL BE PAID FORTHWITH. AND DURING ANY PERIOD OF



1 INCARCERATION, HE'LL PAY THE FINE THROUGH THE INMATE FINANCIAL  
2 RESPONSIBILITY PROGRAM, AT THE RATE OF 50 PERCENT OF  
3 DEFENDANT'S INCOME, OR NOT LESS THAN \$25 PER QUARTER, WHICHEVER  
4 IS GREATER.

5 HE'LL PAY THE FINE DURING HIS SUPERVISED RELEASE PERIOD AT  
6 THE RATE OF \$500 PER MONTH OR MORE, AND THE PAYMENTS WILL BE  
7 SCHEDULED THROUGH THE DISTRICT COURT CLERK FOR THE SOUTHERN  
8 DISTRICT OF CALIFORNIA.

9 UNTIL THE FINE HAS BEEN PAID, HE'LL NOTIFY THE CLERK OF  
10 THE COURT AND THE UNITED STATES ATTORNEY'S OFFICE OF ANY CHANGE  
11 IN HIS MAILING OR RESIDENCE ADDRESS, AS WELL AS ANY BUSINESS OR  
12 EMPLOYMENT THAT HE MAY HAVE. AND HE SHALL DO SO NOT LATER THAN  
13 30 DAYS AFTER THE CHANGE OCCURS.

14 NOW, I DON'T REMEMBER IF THERE WAS A RECOMMENDATION FOR --  
15 RIGHT, THERE IS A RECOMMENDATION THAT HE BE PLACED IN THE RDAP  
16 PROGRAM, WHICH I THINK WOULD BE HELPFUL TO HIM, HOPEFULLY TO  
17 HELP HIM BREAK ANY DRUG ADDICTION THAT HE MAY HAVE.

18 ALTHOUGH, I SUSPECT HE'S PROBABLY WELL ON HIS WAY -- HE'S  
19 BEEN ON PRETRIAL RELEASE SINCE THIS CASE STARTED, RIGHT?

20 MR. BAJAJ: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: AND I ASSUME HE HASN'T SUBMITTED ANY  
22 DIRTY TESTS; OTHERWISE, THEY WOULD HAVE VIOLATED HIM, RIGHT?

23 YEAH, SO I THINK HE'S WELL ON HIS WAY OF BREAKING THAT  
24 ADDICTION. I HOPE HE DOES.

25 SO ANYWAY, NOW I WILL RECOMMEND THAT HE BE HOUSED IN THE

1 NORTHEASTERN PORTION OF THE UNITED STATES SO HE CAN BE CLOSE TO  
2 HIS FAMILY. I'M GOING TO TAKE A WILD GUESS, BUT MY WILD GUESS  
3 IS GOING TO BE THAT YOU'RE GOING TO ASK FOR SELF-SURRENDER?

4 MR. BAJAJ: THAT WOULD BE A GREAT GUESS, YOUR HONOR.  
5 IN THIS INSTANCE, YOU ARE CORRECT, I WOULD.

6 THE COURT: ALL RIGHT. WELL, APPARENTLY, HE'S  
7 BEHAVED WELL DURING PRETRIAL RELEASE.

8 ANYBODY HAVE ANY OBJECTION?

9 MR. JONES: NONE FROM THE GOVERNMENT, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 PROBATION OFFICER: YOUR HONOR, TO MAKE SURE, I'M  
12 WITH PROBATION, NOT PRETRIAL, JUST SO YOU --

13 THE COURT: I GUESS WE DON'T HAVE ANYBODY FROM  
14 PRETRIAL.

15 ALL RIGHT, I WILL ORDER, BY THE WAY, FORFEITURE OF THE  
16 WEAPONS THAT WERE -- I GUESS I ALREADY SIGNED THE ORDER.

17 MR. JONES: YEAH, THERE WAS A PRELIMINARY ORDER, YOUR  
18 HONOR, OF THE WEAPONS AND THE AMMUNITION.

19 THE COURT: I THOUGHT THIS WAS THE FINAL ORDER?

20 MR. JONES: YEAH, THAT IS WHAT WE NEED, THE FINAL  
21 ORDER.

22 THE COURT: ISN'T THAT WHAT I ALREADY SIGNED IN  
23 JANUARY?

24 MR. BAJAJ: THAT'S CORRECT. THE COURT HAD ALREADY  
25 SIGNED IT.

1 THE COURT: YEAH, I ALREADY SIGNED IT.

2 MR. JONES: OKAY.

3 THE COURT: OKAY. ALL RIGHT, SO HOW ABOUT SIX WEEKS?

4 MR. BAJAJ: THAT IS FINE.

5 THE COURT: WILL THAT WORK? OKAY. I'LL ORDER THAT  
6 HE SELF-SURRENDER TO THE DESIGNATED INSTITUTION BY NOT LATER  
7 THAN --

8 GIVE ME A DATE, GLENN, PLEASE.

9 THE CLERK: 5:00 P.M., MAY 17. BOND EXONERATION WILL  
10 BE HERE MAY 20TH, AT 2:00 P.M.

11 THE COURT: OKAY. I'LL ORDER THAT HE REPORT DOWN TO  
12 THE MARSHAL'S OFFICE BY NOT LATER THAN 4:00 P.M. THIS AFTERNOON  
13 IN ORDER TO BE DESIGNATED, BOOKED, AND ALL OF THAT, OKAY.

14 ALL RIGHT. NOW, COUNSEL, DO YOU ACKNOWLEDGE THAT HE'S  
15 WAIVED HIS RIGHT TO APPEAL AND COLLATERAL ATTACK.

16 MR. BAJAJ: YES, YOUR HONOR.

17 THE COURT: MR. DALTON, DO YOU ACKNOWLEDGE THAT  
18 YOU'VE WAIVED YOUR RIGHT TO APPEAL AND COLLATERAL ATTACK?

19 THE DEFENDANT: YES, YOUR HONOR.

20 THE COURT: I WISH YOU NOTHING BUT THE BEST. I HOPE  
21 YOU TAKE THIS OPPORTUNITY TO IMPROVE YOUR LIFE AND THE LIFE OF  
22 YOUR FAMILY. AND I HOPE THAT I DON'T SEE YOU BACK HERE IN  
23 COURT AGAIN, OKAY.

24 THE DEFENDANT: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT, YOU TAKE CARE.

1 MR. BAJAJ: THANK YOU, YOUR HONOR.

2 THE COURT: THANK YOU.

3 THE CLERK: REMAINING UNDERLYING COUNTS, JUDGE.

4 THE COURT: YES. IS THERE A MOTION TO DISMISS THE  
5 REMAINING COUNTS?

6 MR. JONES: SO MOVED, YOUR HONOR.

7 THE COURT: ALL RIGHT, THEY'LL BE DISMISSED. THANK  
8 YOU.

9 (RECESS AT 10:54 A.M.)

10 ---000---

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## C-E-R-T-I-F-I-C-A-T-I-O-N

I HEREBY CERTIFY THAT I AM A DULY APPOINTED,  
QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT  
TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE;  
THAT SAID TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPTION OF MY  
STENOGRAPHIC NOTES; AND THAT THE FORMAT USED HEREIN COMPLIES  
WITH THE RULES AND REQUIREMENTS OF THE UNITED STATES JUDICIAL  
CONFERENCE.

DATED: MAY 25, 2016, AT SAN DIEGO, CALIFORNIA

S/DEBORAH M. O'CONNELL, CSR #10563  
REGISTERED PROFESSIONAL REPORTER

# EXHIBIT D

AO 245B (CASD) (Rev. 12/11) Judgment in a Criminal Case  
Sheet 1

FILED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

2013 APR 11 AM 10:39  
CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

JEREMY ADAM DALTON (1)

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987) DEPUTY

Case Number: 12CR3367-BEN

VIKAS BAJAJ

Defendant's Attorney

REGISTRATION NO. 34594298



THE DEFENDANT:



pleaded guilty to count(s) 1s OF THE SUPERSEDING INFORMATION.



was found guilty on count(s)

after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title & Section	Nature of Offense	Count Number(s)
18 USC 922(g)(1) and 924(a)(2)	FELON IN POSSESSION OF FIREARMS AND AMMUNITION	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) UNDERLYING INFORMATION is ☒ are ☐ dismissed on the motion of the United States.

☒ Assessment: \$100.00 forthwith or under the same repayment terms for the fine as set forth in page 5 of this Judgment and Commitment.

☐ Fine waived

☒ Forfeiture pursuant to order filed JANUARY 15, 2013, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

APRIL 8, 2013

Date of Imposition of Sentence

HON. ROGER T. BENITEZ  
UNITED STATES DISTRICT JUDGE

12CR3367-BEN

DEFENDANT: JEREMY ADAM DALTON (1)

CASE NUMBER: 12CR3367-BEN

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FORTY-EIGHT (48) MONTHS.

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
- ☒ The court makes the following recommendations to the Bureau of Prisons:

DEFENDANT BE ALLOWED TO PARTICIPATE IN THE 500-HOUR DRUG TREATMENT PROGRAM.

DEFENDANT BE INCARCERATED WITHIN THE NORTHEAST REGION OF THE UNITED STATES.

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_
- as notified by the United States Marshal.

- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☒ before 5:00PM ON MAY 17, 2013.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

12CR3367-BEN



DEFENDANT: JEREMY ADAM DALTON (1)

CASE NUMBER: 12CR3367-BEN

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
THREE (3) YEARS.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

*For offenses committed on or after September 13, 1994:*

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

12CR3367-BEN

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN**SPECIAL CONDITIONS OF SUPERVISION**

- ☒ Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- ☐ If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.
- ☐ Not transport, harbor, or assist undocumented aliens.
- ☐ Not associate with undocumented aliens or alien smugglers.
- ☐ Not reenter the United States illegally.
- ☐ Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.
- ☒ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- ☐ Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- ☐ Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- ☐ Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☒ Not own, possess, control, borrow any type of gun, ammunition, dagger, or brass knuckles, even if the time-of-possession is for one second.
- ☒ Provide complete disclosure of personal and business financial records to the probation officer as requested.
- ☐ Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- ☐ Seek and maintain full time employment and/or schooling or a combination of both.
- ☐ Resolve all outstanding warrants within \_\_\_\_\_ days.
- ☐ Complete \_\_\_\_\_ hours of community service in a program approved by the probation officer within \_\_\_\_\_
- ☐ Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of \_\_\_\_\_
- ☒ Participate in a program of drug or alcohol abuse treatment, including urinalysis or sweat patch testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN**FINE**The defendant shall pay a fine in the amount of \$10,000.00 unto the United States of America.This sum shall be paid        immediately.  
  x   as follows:

Through the Clerk, U. S. District Court, forthwith or through the Inmate Financial Responsibility Program (IFRP) at the rate of 50% of the defendant's income, or \$25.00 per quarter during the period of incarceration, whichever is greater. The defendant shall pay the fine during his supervised release at the rate of \$500 per month. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the fine judgment. Until the fine has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

The Court has determined that the defendant does have the ability to pay interest. It is ordered that:  x   The interest requirement is waived.       The interest is modified as follows:

2013 JAN 15 AM 9:26

SOUTHERN DISTRICT OF CALIFORNIA

BY gil DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 12cr3367-BEN
	)	
Plaintiff,	)	ORDER OF CRIMINAL FORFEITURE
	)	
v.	)	
	)	
JEREMY ADAM DALTON,	)	
	)	
Defendant.	)	

WHEREAS, in the Superseding Information in the above-captioned case, the United States sought forfeiture of all right, title and interest in specific properties, to wit:

1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), ZZ caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

of the above-named defendant pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), as properties involved in or traceable to the violation of 18 U.S.C. § 922(g)(1) and 924(a)(2), as charged in the Superseding Information; and

WHEREAS, on or about November 26, 2012, the above-named defendant, JEREMY ADAM DALTON ("Defendant"), pled guilty to the Superseding Information before

Magistrate Judge William McCurine, Jr., which plea provided for the criminal forfeiture of the firearms and ammunition, and included consent to the criminal forfeiture allegations pursuant to Titles 18 and 28 as set forth in the Superseding Information; and

WHEREAS, on or about December 12, 2012, the plea of the Defendant was accepted by the United States District Court; and

WHEREAS, the plea agreement provided for the criminal forfeiture of the firearms and ammunition; and

WHEREAS, by virtue of the facts set forth in the plea agreement, the United States has established the requisite nexus between the forfeited properties and the offense; and

WHEREAS, on or about December 12, 2012 the firearms and ammunition to which Defendant pled were administratively forfeited by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF):

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Based upon the guilty plea of the Defendant, all right, title and interest of Defendant JEREMY ADAM DALTON in

1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), ZZ caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

are hereby forfeited to the United States.

2. As the aforementioned asset was previously forfeited administratively, no further action is needed as to the forfeiture aspect of this criminal case.

DATED:

1/11/2013

  
Honorable Roger T. Benitez  
United States District Judge

# EXHIBIT E

AO 245B (CASD) (Rev. 12/11) Judgment in a Criminal Case  
Sheet 1

FILED

APR 12 2013

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

JEREMY ADAM DALTON (1)

## AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 12CR3367-BEN

VIKAS BAJAJ

Defendant's Attorney

REGISTRATION NO. 34594298

☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)

THE DEFENDANT:

☒ pleaded guilty to count(s) 1s OF THE SUPERSEDING INFORMATION.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
18 USC 922(g)(1) and 924(a)(2)	FELON IN POSSESSION OF FIREARMS AND AMMUNITION	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_
- ☒ Count(s) UNDERLYING INFORMATION is ☒ are ☐ dismissed on the motion of the United States.
- ☒ Assessment: \$100.00 forthwith or under the same repayment terms for the fine as set forth in page 5 of this Judgment and Commitment.

- ☐ Fine waived
- ☒ Forfeiture pursuant to order filed JANUARY 15, 2013, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

APRIL 8, 2013

Date of Imposition of Sentence

  
HON. ROGER T. BENITEZ  
UNITED STATES DISTRICT JUDGE

12CR3367-BEN



DEFENDANT: JEREMY ADAM DALTON (1)

CASE NUMBER: **12CR3367-BEN****IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FIFTY-ONE (51) MONTHS.

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).  
☒ The court makes the following recommendations to the Bureau of Prisons:

DEFENDANT BE ALLOWED TO PARTICIPATE IN THE 500-HOUR DRUG TREATMENT PROGRAM.

DEFENDANT BE INCARCERATED WITHIN THE NORTHEAST REGION OF THE UNITED STATES.

- ☐ The defendant is remanded to the custody of the United States Marshal.  
☐ The defendant shall surrender to the United States Marshal for this district:  
☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_  
as notified by the United States Marshal.

- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
☒ before 5:00PM ON MAY 17, 2013.  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

**12CR3367-BEN**



DEFENDANT: JEREMY ADAM DALTON (1)

CASE NUMBER: 12CR3367-BEN

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
THREE (3) YEARS.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

*For offenses committed on or after September 13, 1994:*

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

12CR3367-BEN

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN**SPECIAL CONDITIONS OF SUPERVISION**

- ☒ Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- ☐ If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.
- ☐ Not transport, harbor, or assist undocumented aliens.
- ☐ Not associate with undocumented aliens or alien smugglers.
- ☐ Not reenter the United States illegally.
- ☐ Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.
- ☒ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- ☐ Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- ☐ Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- ☐ Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☒ Not own, possess, control, borrow any type of gun, ammunition, dagger, or brass knuckles, even if the time-of-possession is for one second.
- ☒ Provide complete disclosure of personal and business financial records to the probation officer as requested.
- ☐ Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- ☐ Seek and maintain full time employment and/or schooling or a combination of both.
- ☐ Resolve all outstanding warrants within \_\_\_\_\_ days.
- ☐ Complete \_\_\_\_\_ hours of community service in a program approved by the probation officer within \_\_\_\_\_
- ☐ Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of \_\_\_\_\_
- ☒ Participate in a program of drug or alcohol abuse treatment, including urinalysis or sweat patch testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☐

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN

**FINE**

The defendant shall pay a fine in the amount of \$10,000.00 unto the United States of America.

This sum shall be paid        immediately.  
  x   as follows:

Through the Clerk, U. S. District Court, forthwith or through the Inmate Financial Responsibility Program (IFRP) at the rate of 50% of the defendant's income, or \$25.00 per quarter during the period of incarceration, whichever is greater. The defendant shall pay the fine during his supervised release at the rate of \$500 per month. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the fine judgment. Until the fine has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

The Court has determined that the defendant does have the ability to pay interest. It is ordered that:

  x   The interest requirement is waived.

       The interest is modified as follows:

2013 JAN 15 AM 9:26

SOUTHERN DISTRICT OF CALIFORNIA

BY                      DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 12cr3367-BEN
	)	
Plaintiff,	)	ORDER OF CRIMINAL FORFEITURE
	)	
v.	)	
	)	
JEREMY ADAM DALTON,	)	
	)	
Defendant.	)	

WHEREAS, in the Superseding Information in the above-captioned case, the United States sought forfeiture of all right, title and interest in specific properties, to wit:

1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), ZZ caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

of the above-named defendant pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), as properties involved in or traceable to the violation of 18 U.S.C. § 922(g)(1) and 924(a)(2), as charged in the Superseding Information; and

WHEREAS, on or about November 26, 2012, the above-named defendant, JEREMY ADAM DALTON ("Defendant"), pled guilty to the Superseding Information before

Magistrate Judge William McCurine, Jr., which plea provided for the criminal forfeiture of the firearms and ammunition, and included consent to the criminal forfeiture allegations pursuant to Titles 18 and 28 as set forth in the Superseding Information; and

WHEREAS, on or about December 12, 2012, the plea of the Defendant was accepted by the United States District Court; and

WHEREAS, the plea agreement provided for the criminal forfeiture of the firearms and ammunition; and

WHEREAS, by virtue of the facts set forth in the plea agreement, the United States has established the requisite nexus between the forfeited properties and the offense; and

WHEREAS, on or about December 12, 2012 the firearms and ammunition to which Defendant pled were administratively forfeited by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF):

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Based upon the guilty plea of the Defendant, all right, title and interest of Defendant JEREMY ADAM DALTON in

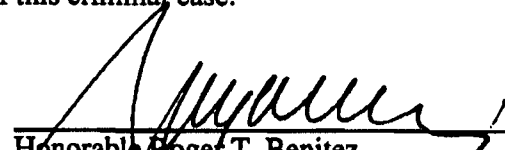
1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), .22 caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

are hereby forfeited to the United States.

2. As the aforementioned asset was previously forfeited administratively, no further action is needed as to the forfeiture aspect of this criminal case.

DATED:

1/11/2013

  
Honorable Roger T. Benitez  
United States District Judge



1	18 U.S.C. § 924(e) .....	6, 7,
2	18 U.S.C. § 3553(a)(4) .....	13
3	28 U.S.C. § 994(h) .....	13
4	28 U.S.C. § 2255 .....	<i>passim</i>
5	ACCA .....	<i>passim</i>

## STATE CASES

8	<i>State v. Cooley</i> , 544 N.E.2d 895 (Ohio 1989) .....	7
9	<i>State v. Cooper</i> , 743 N.E.2d 427 (Ohio Ct. App. 2000) .....	6
10	<i>State v. Hodges</i> , 669 N.E.2d 256 (Ohio Ct. App. 1995) .....	6

## STATE STATUTES

13	Ohio Rev. Code Ann. § 2901.01(A)(5)(a) .....	6
14	Ohio Rev. Code Ann. § 2901.22(A) .....	7
15	Ohio Rev. Code Ann. § 2903.11 .....	1, 3, 4, 5, 8

## ADVISORY GUIDELINES

18	U.S.S.G. § 2K2.1 .....	1, 2, 3, 4
19	U.S.S.G. § 3E1.1 .....	3
20	U.S.S.G. § 4B1.1(a) .....	14
21	U.S.S.G. § 4B1.2 .....	<i>passim</i>



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Attorneys for Jeremy Adam Dalton

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
**(HONORABLE ROGER T. BENITEZ)**

**United States of America,**

Plaintiff,

v.

**Jeremy Adam Dalton,**

Defendant.

Case No. 12-CR-3367-BEN

Civil No. \_\_\_\_\_

**Motion to Vacate, Set Aside, or Correct  
Sentence Under 28 U.S.C. § 2255**

**I.**

**Introduction**

Jeremy Dalton moves this Court to vacate and correct his conviction and sentence under 28 U.S.C. § 2255 on the basis of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). In 2012, Mr. Dalton was convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). At sentencing, the district court used Mr. Dalton's criminal history to enhance his sentence. The court ruled that Mr. Dalton's prior conviction for felonious assault under Ohio Rev. Code § 2903.11(A)(1) qualified as a "crime of violence" under U.S.S.G. § 2K2.1(a)(4)(A).



1 The effect of this finding was to significantly increase Mr. Dalton's Guidelines  
 2 range. His base offense level was raised from 14 to 20 (before adjustments and  
 3 departures). Instead of a Guidelines range of 21-27 months, he faced a range at  
 4 sentencing of 41-51 months. The district court sentenced him to the high end of 51  
 5 months in prison.

6 Under *Johnson*, Mr. Dalton should not have started at a base offense level of  
 7 20, because his Ohio assault conviction does not qualify as a "crime of violence"  
 8 under the sentencing guidelines. In *Johnson*, the Supreme Court struck down the  
 9 residual clause of the Armed Career Criminal Act as unconstitutionally vague. 135  
 10 S. Ct. at 2557. Like the residual clause in the Act, section 4B1.2<sup>1</sup> of the Sentencing  
 11 Guidelines defines a "crime of violence" using language that is void for vagueness.  
 12 See *Dimaya v. Lynch*, 803 F.3d 1110 (9th Cir. 2015). And because Ohio felonious  
 13 assault does not qualify as a "crime of violence" under any of the alternative  
 14 definitions contained in § 4B1.2 (as an offense that has as an element the use,  
 15 attempted use, or threat of violent physical force, or as one of four specifically  
 16 enumerated offenses), Mr. Dalton is entitled to relief under 28 U.S.C. § 2255.

17 Mr. Dalton's petition is timely under 28 U.S.C. § 2255(f)(3) because he filed it  
 18 within one year of the Supreme Court's decision in *Johnson*. Therefore, Mr. Dalton  
 19 respectfully requests that this Court grant his § 2255 motion, vacate his current  
 20 sentence, and re-sentence him.

## 21 II.

### 22 Statement of Facts

#### 23 A. Indictment, plea agreement, and Pre-Sentence Report.

24 On November 26, 2012, Mr. Dalton waived indictment, and an Information was  
 25 filed charging him with one count of being a felon in possession of a firearm and  
 26

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27 <sup>1</sup> U.S.S.G. § 2K2.1cmt. n.1 cross-references the definition of a "crime of violence"  
 28 found in U.S.S.G. § 4B1.2. This motion will generally refer to § 4B1.2 for clarity.

ammunition in violation of 18 U.S.C. § 922(g)(1). *See* Exhibit A. The same day he pleaded guilty by way of a plea agreement to Count One. *See* Dkt. No. 26. In the plea agreement, the parties agreed to Guidelines calculations that included a specific offense characteristic of 8-24 firearms under § 2K2.1(b)(1)(B) and a three-level adjustment for acceptance of responsibility under § 3E1.1, and a base offense level set at 20 under § 2K2.1. *See* Pre-Sentence Report (“PSR”) at 16. The government agreed to recommend a low-end Guideline sentence. *Id.* at 13. The parties also agreed that Mr. Dalton could seek additional adjustments, departures, and variances, and that the government could oppose them. *Id.*

The PSR calculated a base offense level of 20. *See id.* at 7 (citing § 2K2.1(a)(4)(A)<sup>2</sup>). It did so because it claimed that Mr. Dalton’s 2006 conviction for felonious assault under Ohio Rev. Code § 2903.11(A)(1) qualified as a “crime of violence” under § 4B1.2. *Id.*; *see* § 2K2.1(a)(4) (imposing a base offense level of 20 when the instant offense is committed after a felony conviction for a “crime of violence”). The PSR also recommended a four-level enhancement for the offense involving 8 to 24 firearms. *Id.* At criminal history II, and after the three-level reduction for acceptance of responsibility, the PSR calculated Mr. Dalton’s final adjusted offense level as 21 and his Guidelines range as 41-51 months in prison. *Id.* at 21.

If the PSR had not scored Mr. Dalton’s assault conviction as a “crime of violence,” his base offense level would have been 14. *See* § 2K2.1(a)(7).

## **B. Sentencing.**

Mr. Dalton appeared before the district court for sentencing on April 8, 2013. *See* Dkt. No. 45. At sentencing, the court followed the plea agreement and assigned

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<sup>2</sup> This and all citations to the United States Sentencing Guidelines are to the Nov. 1, 2012 edition in use at the time of Mr. Dalton’s sentencing.

him a base offense level of 20, a four-level adjustment for additional firearms, and a three-level adjustment for acceptance of responsibility. *See* Transcript of Sentencing Hearing (“Exhibit B”) at 13-14. With Mr. Dalton’s criminal history category at II, the court calculated his Guidelines range at 41-51 months. *Id.* at 14. The district court imposed a high-end sentence of 51 months. *Id.*

### **C. Subsequent events.**

Mr. Dalton did not appeal his conviction or sentence.

On June 26, 2015, the Supreme Court issued its decision in *Johnson* striking down the “residual clause” of the Armed Career Criminal Act as unconstitutionally vague. 135 S. Ct. at 2557. Mr. Dalton now timely files this motion under § 2255 seeking relief under *Johnson*.

Mr. Dalton’s current scheduled release date from BOP custody is **February 3, 2017.**

## **III.**

### **Argument**

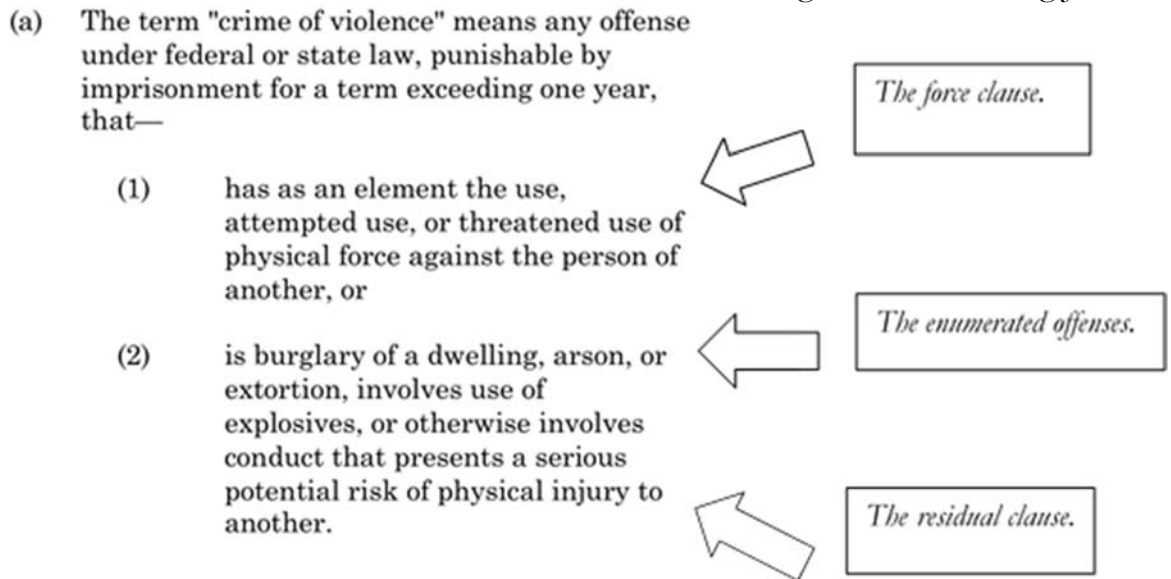
Mr. Dalton’s sentence was enhanced because the district court found that his prior conviction for felonious assault under Ohio Rev. Code § 2903.11(A)(1) qualified as a “crime of violence” under the Career Offender sentencing guideline, and thereby resulted in an enhanced base offense level for his felon-in-possession charge. However, Ohio felonious assault cannot qualify as a crime of violence after the Supreme Court’s decision in *Johnson*, because it no longer qualifies under any of the definitions contained in the Guideline. His sentence should be vacated, and he should be re-sentenced without the adjustment.

#### **A. Mr. Dalton’s conviction for felonious assault under Ohio Rev. Code 2903.11(A)(1) is not a crime of violence after *Johnson*.**

There are three ways a conviction can qualify as a “crime of violence” under the cross-referenced Career Offender sentencing guideline: (1) under the force clause; (2) as a match for one of the four enumerated, generic offenses; or (3) under

the now-unconstitutional residual clause. The Ohio assault statute doesn't qualify under any of the three.

First, Ohio felonious assault does not qualify as a crime of violence under the "force clause," for two reasons. The crime is not defined in terms of applying physical force, but in causing "physical injury" that is so broad, it expressly encompasses mental illness or conditions. Moreover, the offense does not require an *intentional* application of force. Second, the Ohio offense is not one of the four enumerated offenses. Third, Ohio felonious assault cannot qualify as a crime of violence under the residual clause, which is now void for vagueness following *Johnson*.



**FIG. 1** -The Career Offender sentencing guideline's definition of a "crime of violence."  
U.S.S.G. § 4B1.2.

1. Ohio felonious assault is not a crime of violence under the force clause because it is overbroad as to "physical force" and required mental state.

To qualify as a crime of violence under the force clause, an offense must have "as an element the use, attempted use, or threatened use of physical force against the person of another." § 4B1.2\*a)(1). However, Ohio Rev. Code § 2903.11(A)(1) does not require as an element the employment of "physical force," as shown by the fact that it expressly treats psychological conditions as "physical harm" and does not

1 require the intentional “use” of any force it does involve.<sup>3</sup>

2       The Ohio statute does not specify a use of force as an element, but takes as  
3 the gravamen any knowing acts that “[c]ause serious physical harm.” However,  
4 “serious physical harm” is expressly defined by statute to include “[a]ny mental  
5 illness or condition of such gravity as would normally require hospitalization or  
6 prolonged psychiatric treatment.” Ohio Rev. Code § 2901.01(A)(5)(a). The Supreme  
7 Court has already held that “We think it clear that in the context of a statutory  
8 definition of ‘violent felony,’ the phrase ‘physical force’ means *violent* force—that is,  
9 force capable of causing **physical** pain or injury to another person.” *Curtis Johnson v.*  
10 *United States*, 559 U.S. 133, 140 (2010) (emphasis added) (discussing definition of  
11 “violent felony” in 18 U.S.C. § 924(e)(2)(B)(i), which is worded identically to the  
12 force clause in § 4B1.2(a)(1)). Consequently, the Ohio felonious assault can lie where  
13 the defendant commits some non-violent act that results in severe emotional trauma  
14 to the victim. *See, e.g., State v. Cooper*, 743 N.E.2d 427 (Ohio App. 2000) (finding  
15 multiple acts and omissions towards defendant’s children, resulting in their having  
16 mental illness, sufficed to constitute felonious assault); *State v. Hodges*, 669 N.E.2d  
17 256 (Ohio App. 1995) (holding priest’s cajoling victim into having sex, causing  
18 victim’s mental breakdown, constituted felonious assault). Because the crime  
19 includes causing non-physical harm with no use of force, it is overbroad and does  
20 not necessarily involve the use or attempted use of violent “physical force.”

21       Moreover, the Ohio offense does not qualify as a “crime of violence” under  
22 the force clause, because it does not require the *intentional* use or threatened use of  
23 physical force. The Supreme Court first announced this rule in *Leocal v. Ashcroft*,  
24 holding that DUI was not a crime of violence under the nearly identical force clause  
25 in 18 U.S.C. § 16(a), because the offense could be committed through mere  
26

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27  
28 <sup>3</sup> The pertinent part of the statute reads: “(A) No person shall knowingly do either of  
the following: [¶] (1) Cause serious physical harm to another or another’s unborn.”

negligence. *See* 543 U.S. 1, 9-10 (2004). The en banc Ninth Circuit went on to interpret *Leocal* as requiring “that to constitute a federal crime of violence an offense must involve the **intentional** use of force against the person or property of another.” *Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1132 (9th Cir. 2006) (en banc) (emphasis added); *see also United States v. Gomez-Leon*, 545 F.3d 777, 787 (9th Cir. 2008) (holding that to qualify as a crime of violence under the force clause, “the underlying offense must require proof of an **intentional** use of force”) (emphasis added). Likewise, in *United States v. Dixon*, the Ninth Circuit addressed the nearly identical provision in the Armed Career Criminal Act, defining a “violent felony” to include offenses with “an element of the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(b)(i). The court adhered to a long line of Ninth Circuit and Supreme Court precedents limiting violent felonies under the ACCA—as well as crimes of violence under § 16(a)—to those that require the *intentional* use of physical force. *See* 805 F.3d 1193, 1197 (9th Cir. 2015) (citing *Leocal* 543 U.S. at 12-13 and *(Curtis) Johnson*, 559 U.S. at 140)). Since the force clause in the ACCA is identical to the force clause in the Career Offender sentencing guideline, *compare* 18 U.S.C. § 924(e)(2)(B)(ii) *with* § 4B1.2(a)(2)(b); *see also United States v. Terrell*, 593 F.3d 1084, 1087 n.1 (9th Cir. 2010), in order for an offense to qualify as a “crime of violence” here involving the “active employment” of force, *Leocal*, 543 U.S. at 9, the state statute must require *intent*.

However, the Ohio felonious assault requires only knowledge, which, under Ohio law, is a separate and lesser mental state than purpose or intent. *See* Ohio Rev. Code § 2901.22(A) (“A person acts purposely when it is the person’s specific intention to cause a certain result”) & (B) (“A person acts knowingly, **regardless of purpose**, when the person is aware that the person’s conduct will probably cause a certain result”) (emphasis added); *State v. Cooney*, 544 N.E.2d 895, 905 (Ohio 1989) (“the culpable mental state required for a felonious assault conviction . . . is **not purpose**, but knowledge”) (emphasis added). But *Fernandez-Ruiz* contrasted the



1 accidental application of force discussed in *Leocal* with force that is the result of a  
 2 “purposeful act”: “ ‘Purposeful’ means ‘[d]one with a specific purpose in mind;  
 3 DELIBERATE.’ ” 466 F.3d at 1130 (citation omitted). Consequently, Ohio  
 4 defines the mental state required for felonious assault (knowledge) precisely in the  
 5 way *Fernandez-Ruiz* recognized disqualifies an offense as a crime of violence under  
 6 *Leocal*.

7 Because Ohio felonious assault cannot qualify as a violent felony under the  
 8 force clause of the ACCA, it likewise cannot qualify as a crime of violence under the  
 9 force clause of the Guidelines and so cannot serve as a predicate to the enhanced  
 10 base offense level.

11 **2. Ohio Rev. Code § 2903.11 does not qualify as an enumerated offense.**

12 The Career Offender sentencing guideline names four generic crimes which, if  
 13 a prior statute of conviction matches their elements, qualify that statute as a crime of  
 14 violence. *See* U.S.S.G. § 4B1.2(a)(2). The four generic crimes include “burglary of a  
 15 dwelling, arson, or extortion” or an offense involving use of explosives. *Id.*  
 16 However, Ohio felonious assault is manifestly not any of these four offenses. The  
 17 Ohio crime is patently not predicated on elements of entry of a dwelling, destruction  
 18 of property by fire, the constrained obtaining of property, or the use of explosives.  
 19 *See* 2 *Ohio Jury Instructions—Criminal* 503.11(A) (Apr. 2016) (jury must only find  
 20 defendant “knowingly [¶] caused serious physical harm”). Due to a total mismatch  
 21 of the required elements, § 2903.11(A)(1) does not qualify as an enumerated offense  
 22 in § 4B1.2.

23 **3. Following *Johnson*, Ohio felonious assault cannot qualify as a crime of**  
 24 **violence under section 924(c)’s residual clause.**

25 (*Samuel*) *Johnson* holds that the residual clause of the Career Offender  
 26 sentencing guideline is now void for vagueness, and so Mr. Dalton’s assault  
 27 conviction under § 2903.11(A)(1) cannot qualify as a “crime of violence” under that  
 28 prong of § 4B1.2(a)(2).

1                   a.     Johnson applies to the Sentencing Guidelines.

2             In other cases, the government has conceded – and this Court has accepted  
3 that concession – that *Johnson* applies to the Sentencing Guidelines. *See, e.g., United*  
4 *States v. Benavides*, 617 F. App’x 790 (9th Cir. 2015). In *United States v. Torres*, No. 14-  
5 10210 (9th Cir.) (argued and submitted on December 8, 2015), the United States  
6 agreed that “the invalidation of the ACCA’s residual clause in *Johnson* applies to the  
7 identically worded clause in § 4B1.2(a)(2), and thus that [the defendant’s] felony  
8 convictions, after *Johnson*, no longer qualify as ‘crimes of violence.’” *Torres*, No. 14-  
9 10210, ECF No. 53 at 4.

10            This Court has interpreted the identically worded residual clauses of the  
11 Armed Career Criminal Act and §4B1.2 interchangeably. *See, e.g., United States v.*  
12 *Willis*, 795 F.3d 986, 996 (9th Cir. 2015). Further, the advisory guidelines are subject  
13 to claims of unconstitutional vagueness. *Peugh v. United States*, 133 S. Ct. 2072, 2078  
14 (2013) (holding that the Ex Post Facto Clause applies to advisory guidelines); *see also*  
15 *United States v. Johnson*, 130 F.3d 1352, 1354 (9th Cir. 1997) (then-mandatory  
16 guidelines were susceptible to vagueness challenges); *Gall v. United States*, 552 U.S. 38,  
17 49 (2007) (continuing to require that the advisory guidelines be the starting point for  
18 sentencing).

19            In *Peugh*, the Sentencing Guidelines had changed between the defendant’s  
20 commission of the crime and his sentencing. 133 S. Ct. at 2078. The change  
21 increased the offense level, and therefore the Guidelines range to which the  
22 defendant was exposed. *Id.* at 2078-79. In finding that the Ex Post Facto Clause of  
23 the Constitution applied, the Court expressly rejected the government’s argument  
24 that no violation could occur where the Guidelines were merely advisory. *Id.* at 2087.  
25 Pointing to empirical evidence demonstrating the central, “lodestone” role the  
26 Guidelines play in “influencing the sentences imposed by judges,” the Court held  
27 that “the [Guidelines] range is intended to, and usually does, exert controlling  
28 influence on the sentence the court will impose.” *Id.* at 2084, 2085. This outsized



influence means, the Court held, that the Guidelines are susceptible to constitutional challenges even though they are now advisory. *Id.*

Here, the due process principles espoused in *(Samuel) Johnson*, combined with the application of constitutional protections to the Guidelines under *Peugh*, compel the conclusion that the identical residual clause of §4B1.2 is also unconstitutionally vague. *United States v. Madrid*, 805 F.3d 1204, 1211 (10th Cir. 2015); *see also Dimaya*, 803 F.3d at 1120 (holding 18 U.S.C. § 16(b)'s residual clause, as incorporated in 8 U.S.C. § 1101(a)(43)(F), is unconstitutionally vague).

Ohio felonious assault is not a crime of violence under § 4B1.2, and Mr. Dalton's enhanced sentencing guidelines based on his conviction under that statute violated due process.

**b. *Johnson's application to the Guidelines is retroactive under Welch.***

A new rule has been "made retroactive to cases on collateral review" if "the Supreme Court holds it to be retroactive." *Tyler v. Cain*, 533 U.S. 656, 663 (2001). The Supreme Court has held that new substantive rules "generally apply retroactively," while new procedural rules do not. *Schriro v. Summerlin*, 542 U.S. 348, 351-52 (2004); *see also Bousley v. United States*, 523 U.S. 614, 620 (1998); *Teague v. Lane*, 489 U.S. 288, 311 (1989) (plurality op.). Substantive rules include rules that "narrow the scope of a criminal statute by interpreting its terms," *Schriro*, 542 U.S. at 351-52, or "alter[] the range of conduct or the class of persons that the law punishes," *id.* at 353.

In *Welch v. United States*, the Supreme Court held that *Johnson* was a "new substantive rule that has retroactive effect in cases on collateral review." 136 S. Ct. 1257, 1268 (2016). It is substantive, the Court held, because it changed the substantive reach of a sentencing enhancement. *Id.* at 1265. "*Johnson* establishes . . . that 'even the use of impeccable factfinding procedures could not legitimate' a sentence based on that clause. . . . It follows that *Johnson* is a substantive decision." *Id.*

Just as clearly, *Welch* held that *Johnson* is decidedly not a procedural rule. It

1 does not “allocate decision making authority between jury and jury, or regulate the  
 2 evidence that the court could consider in making its decision.” *Id.* (internal citations  
 3 and quotation marks omitted). Rather, *Johnson* affected the reach of the underlying  
 4 statute rather than the judicial procedures by which the statute is applied.” *Id.*

5 The fact that *Welch* arose in the context of the Armed Career Criminal Act is  
 6 of no effect. The holding of *Welch* is not limited to Armed Career Criminal Act  
 7 defendants, as the Court states: “The residual clause is invalid under *Johnson* so it can  
 8 no longer mandate or authorize *any* sentence.” *Id.* (emphasis added). “It follows that  
 9 *Johnson* is a substantive decision,” *id.*—not a substantive decision as it relates to  
 10 Armed Career Criminal Act defendants, but a substantive decision, period.

11 Under *Teague*, “either a rule is retroactive or it is not.” *United States v. Doe*, 810  
 12 F.3d 132, 154 & n.13 (3d Cir. 2015). As the government itself has previously argued,  
 13 it was “not aware of any . . . chameleon-like rules” that “were substantive for some  
 14 purposes and procedural for others.” Supplemental Brief for United States on  
 15 Rehearing En Banc, *Spencer v. United States*, No. 10-10676, at 15 (11th Cir. Aug. 15,  
 16 2013). Rather, a rule’s “status as a substantive rule is fixed,” and “does not fluctuate  
 17 based on whether the prisoner is challenging an Armed Career Criminal Act  
 18 enhancement, a mandatory guidelines enhancement, or, as here, an advisory  
 19 guidelines enhancement.” *Id.* at 15; *see also Reina-Rodriguez v. United States*, 655 F.3d  
 20 1182, 1189 (9th Cir. 2011) (en banc) (applying a rule that was substantive in the  
 21 Armed Career Criminal Act context to the guidelines). Because *Johnson* states a  
 22 substantive rule, it must be given retroactive effect, regardless of the context.

23 “Increasing a defendant’s sentence under the residual clause denies due  
 24 process of law” because it is “vague in all its applications.” *Johnson*, 135 S. Ct. at 2551.  
 25 Because it is invalid, the residual clause can no longer “mandate or authorize any  
 26 sentence.” Therefore, any “sentence that is based on that clause” is illegitimate.  
 27 *Welch*, 136 S. Ct. at 1265. And when a court enhances a sentence using the residual  
 28 clause of the Career Offender sentencing guidelines, that sentence is “based on” the

1 clause. As the Supreme Court main succicntly clear in *Peugh*, “the guidelines are in a  
2 real sense the *basis* for the sentence.” 133 S. Ct. 2072, 2083 (emphasis added).

3 i. The holding and reasoning of *Welch* apply with equal force  
4 to the Sentencing Guidelines.

5 It makes no difference whether a sentence is based on the residual clause in  
6 the Armed Career Criminal Act or the residual clause in the Career Offender  
7 sentencing guideline. In either case the sentence is illegitimate. By invalidating the  
8 residual clause in its entirety, “*Johnson* ‘changed the substantive reach of the  
9 [guidelines], ‘altering the range of conduct or class of persons’” that can be punished  
10 under the career offender – or any other enhancement based on § 4B1.2(a)(2)’s  
11 residual clause – guideline. *Welch*, 136 S. Ct. at 1265. Consistent with lower decisions  
12 before and after *Johnson*,<sup>4</sup> *Welch* made clear that the relevant “category” for  
13 retroactivity purposes is the *rule*, not the *type of case* in which the rule is invoked.

14 That this is so is made clear by the way the Court framed the issue. The  
15 question in *Welch*, as framed by the Court, was whether the “new rule [announced in  
16 *Johnson*] falls within one of the two categories that have retroactive effect under  
17 *Teague*,” which it defined as “categories of decisions” that are “substantive rules” or  
18 “watershed rules of criminal procedure,” *Welch*, 136 U.S. at 1264. (emphasis added).  
19 The Court did not, as the Government had hoped, even hint that it intended to  
20 divide Armed Career Criminal Act errors and Guidelines errors into “two distinct  
21

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22 <sup>4</sup> See, e.g., *United States v. Doe*, 810 F.3d 132, 154 & n.13 (3d Cir. 2015); *Narvaez v.*  
23 *United States*, 674 F.3d 621, 625-26 (7th Cir. 2011); *Brown v. Caraway*, 719 F.3d 583,  
24 594–95 (7th Cir. 2013); *Reina-Rodriguez v. United States*, 655 F.3d 1182, 1189 (9th Cir.  
25 2011); *Rozier v. United States*, 701 F.3d 681 (11th Cir. 2012); *In re Watkins*, 810 F.3d  
26 375, 383 (6th Cir. 2015) (holding in an ACCA case that *Johnson* is “categorically  
27 retroactive” to cases on collateral review); *In re Grant*, No. 15-5795 (6th Cir. March  
28 7, 2016) (authorizing successive § 2255 motion in a guidelines case based on  
*Watkins*); *Price v. United States*, 795 F.3d 731, 734 (7th Cir. 2015) (holding in an  
ACCA case that *Johnson* is “categorically retroactive”); *Stork v. United States*, No.  
15-2687, slip op. at 1 (7th Cir. Aug. 13, 2015).

categories” for retroactivity purposes. It held, without qualification, that the residual clause is invalid at all times and for all purposes. *Id.* at 1265. In light of the Court’s holding, one can only conclude that the substantive rule announced in *Johnson* is categorically retroactive to all cases in which it applies.<sup>5</sup>

ii. The Career Offender guideline is both uniquely statutory and uniquely severe in its application.

Congress has instructed that district courts “shall consider” the “sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines,” 18 U.S.C. § 3553(a)(4), an instruction that has always been and remains mandatory. And the Supreme Court has made clear that the guidelines are the sentencing court’s “starting point and . . . initial benchmark. *Gall v. United States*, 552 U.S. 38, 49 (2007). District courts “must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process,” *Peugh*, 133 S. Ct. at 2083. “When a defendant is sentenced under an incorrect guideline range – whether or not the defendant’s ultimate sentence falls within the correct range – the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.” *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345 (2016).

While all of the guidelines are legislative in nature, offender guideline is uniquely statutory and also uniquely severe. The Sentencing Commission established the career offender guideline pursuant to a congressional directive to “specify a sentence to a term of imprisonment at or near the maximum term authorized” for defendants convicted for at least the third time of a felony that is a “crime of violence” or a specified drug offense. *See* 28 U.S.C. § 994(h). Accordingly, the guideline ties the offense level to the statutory maximum for the offense of

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<sup>5</sup> *See Davis v. United States*, 564 U.S. 229, 243 (2011) (retroactivity is a “categorical matter”).

conviction and automatically places the defendant in Criminal History Category VI if he is convicted for at least the third time of a felony that is a “crime of violence” or a “controlled substance offense.” *See* U.S.S.G. § 4B1.1(a)-(b) (2015).

The Commission has no discretion to reduce the severity of the career offender guideline, *see United States v. LaBonte*, 520 U.S. 751, 757 (1997), despite the fact that it creates a “category of offender subject to particularly severe punishment,” *Buford v. United States*, 532 U.S. 59, 60 (2001). Indeed, whether or not a defendant is subject to that punishment makes a huge difference. The guideline range for a defendant convicted of a drug offense who is classified as a career offender is tied to the statutory maximum, while the guideline range for a person convicted of a drug offense who is not classified as a career offender is tied to the statutory minimum. As a result, the average career offender guideline minimum in 2014 (204 months) was 2.46 times the non-career offender guideline minimum (83 months), and the average sentence imposed on drug offenders classified as career offenders (138.6 months) was 2.35 times the average sentence imposed on drug offenders not classified as career offenders (62 months).

The mandatory guidelines, of course, “ha[d] the force and effect of laws,” were “binding on all judges,” and prescribed “the maximum [sentence] authorized.” *United States v. Booker*, 543 U.S. 220, 233-34 (2005).

The holding and reasoning of *Welch* compel the conclusion that *Johnson* applies retroactively in cases involving defendants who received a sentencing enhancement under the residual clause in USSG § 4B1.2(a).

**B. Mr. Dalton is otherwise entitled to relief under 28 U.S.C. § 2255, because his claim is cognizable, and his petition is timely.**

**1. Mr. Dalton’s claim is cognizable under § 2255(a).**

A federal prisoner may move to “vacate, set aside or correct” his sentence if it “was imposed in violation of the Constitution.” 28 U.S.C. § 2255(a). Mr. Dalton’s 51-month sentence was imposed in violation of the Constitution because it was

1 predicated on a residual clause that is “unconstitutionally vague”; thus, “imposing an  
 2 increased sentence under the residual clause . . . violates the Constitution’s guarantee  
 3 of due process.” *Johnson*, 135 S. Ct. at 2563. As demonstrated above, *Johnson*’s  
 4 constitutional holding regarding the Armed Career Criminal Act’s residual clause  
 5 applies to the nearly-identical residual clause in 18 U.S.C. § 924(c)(3)(B). *See Dimaya*,  
 6 803 F.3d at 1120 (applying *Johnson* to identical wording of residual provision in  
 7 § 16(b)). Thus, Mr. Dalton’s claim for relief is cognizable under the plain language of  
 8 § 2255(a).

9 This is all that is required. Because Mr. Dalton’s sentence was imposed “in  
 10 violation of the Constitution,” 28 U.S.C. § 2255(a), the “fundamental defect”  
 11 standard applicable to ordinary claims of statutory error does not apply. Only a non-  
 12 jurisdictional, non-constitutional error of law must constitute “a fundamental defect  
 13 which inherently results in a complete miscarriage of justice” in order to be  
 14 cognizable. *Hill v. United States*, 368 U.S. 424, 428 (1962); *see also United States v.*  
 15 *Addonizio*, 442 U.S. 178, 185 (1979); *Davis v. United States*, 417 U.S. 333, 343-344  
 16 (1974); *United States v. Foote*, 784 F.3d 931, 936 (4th Cir. 2015) (“[I]f the alleged  
 17 sentencing error is neither constitutional nor jurisdictional, a district court lacks  
 18 authority to review it unless it amounts to ‘a fundamental defect which inherently  
 19 results in a complete miscarriage of justice.’”) (citations omitted); *Narvaez v. United*  
 20 *States*, 674 F.3d 621, 623 (7th Cir. 2011) (“The term ‘miscarriage of justice’ comes  
 21 from the Supreme Court’s holding that a non-jurisdictional, non-constitutional error  
 22 of law is not a basis for collateral attack under § 2255 unless the error is ‘a  
 23 fundamental defect which inherently results in a complete miscarriage of justice.’”) (citations omitted).

25 A claim based on *Johnson*, in contrast, is constitutional and therefore  
 26 cognizable. *See United States v. Coleman*, 763 F.3d 706, 708 (7th Cir. 2014) (although an  
 27 erroneous determination of an advisory guideline range “generally [is] not cognizable  
 28 on a § 2255 motion,” relief “is available” for “an error of constitutional . . .



1 magnitude”); *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (recognizing  
2 that “fundamental defect” standard does not apply to constitutional or jurisdictional  
3 error); Order, *Brown v. United States*, No. 15-10025 (11th Cir. Sept. 2, 2015) (granting  
4 certificate of appealability because although a claim that a defendant was  
5 misclassified as a career offender “is generally not cognizable” under circuit law  
6 applicable to errors of statutory interpretation, “*Johnson* involved a claim of  
7 constitutional error”).

8       **2.     This motion is timely under 28 U.S.C. § 2255(f)(3).**

9       Mr. Dalton’s motion is also timely under 28 U.S.C. § 2255(f)(3), which  
10 provides for a one-year limitations period to run from “the date on which the right  
11 asserted was initially recognized by the Supreme Court, if that right has been newly  
12 recognized by the Supreme Court and made retroactively applicable to cases on  
13 collateral review.”

14       The Supreme Court decided *Johnson* on June 26, 2015, and Mr. Dalton filed his  
15 claim within a year of that date. As discussed above, the Supreme Court recognized a  
16 new right in *Johnson*, and announced a substantive rule that is therefore retroactive to  
17 cases on collateral review.

1 IV.

2 **Conclusion**

3 Because Mr. Dalton's Ohio felonious assault conviction is no longer a crime  
4 of violence after *Johnson*, and because he has shown that he is otherwise entitled to  
5 relief under 28 U.S.C. § 2255, Mr. Dalton respectfully requests that this Court grant  
6 his motion, vacate the sentence, and re-sentence him.

7 Respectfully submitted,

8  
9 Dated: June 13, 2016

*s/ Benjamin P. Davis*

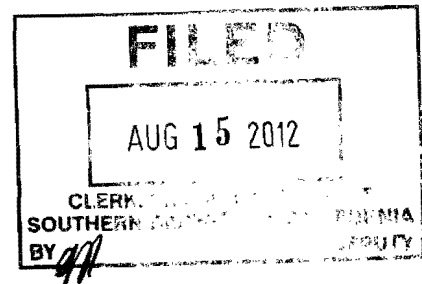
**Benjamin P. Davis**

**Kara Hartzler**

Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Dalton



# EXHIBIT A



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10	UNITED STATES OF AMERICA,	)	Case No. <u>12CR3367-BEN</u>
11	Plaintiff,	)	<u>I N F O R M A T I O N</u>
12	v.	)	Title 18, U.S.C., Secs. 922(g)(1)
13	JEREMY ADAM DALTON,	)	and 924(a)(2) - Felon in
14	Defendant.	)	Possession of a Firearm; Title 18,
15		)	U.S.C., Sec. 924(d)(1) and
		)	Title 28, U.S.C., Sec. 2461(c) -
		)	Criminal Forfeiture

The United States Attorney charges:

On or about June 7, 2012, within the Southern District of California, defendant JEREMY ADAM DALTON, being a person who had previously been convicted in a court, that is, the Superior Court of Ohio, County of Ohio, of a crime punishable by imprisonment for a term exceeding one year, that is, on or about July 7, 2008, of Possession of Cocaine, in violation of Ohio Revised Code Section 2925.11(A)(C)(4)(b), did knowingly and unlawfully possess in and affecting interstate commerce, to wit: one Glock, model 23, .40 caliber, pistol, bearing serial number BDB110US; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

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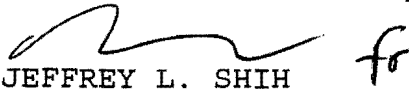
JLS(RKJ):nlv:8/14/12

FORFEITURE ALLEGATION

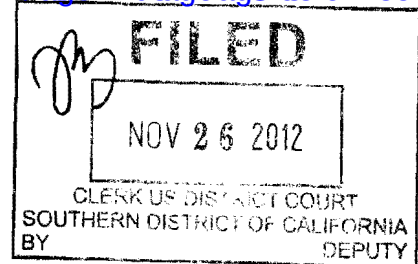
Upon conviction of the offense alleged in this Information, defendant JEREMY ADAM DALTON shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d)(1), and Title 28, United States Code, Section 2461(c), the firearm involved, to wit: one Glock, model 23, .40 caliber, pistol, bearing serial number BDB110US; in violation of Title 18, United States Code, Section 924(d)(1), and Title 28, United States Code, Section 2461(c).

DATED: 8/15/12.

LAURA E. DUFFY  
United States Attorney

  
JEFFREY L. SHIH  
Assistant U.S. Attorney

# **EXHIBIT B**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10	UNITED STATES OF AMERICA,	)	Case No. <u>12CR3367-BEN</u>
11	Plaintiff,	)	<u>I N F O R M A T I O N</u>
12	v.	)	(SUPERSEDING)
13	JEREMY ADAM DALTON,	)	Title 18, U.S.C., Secs. 922(g)(1)
14	Defendant.	)	and 924(a)(2) - Felon in
15		)	Possession of Firearms and
		)	Ammunition; Title 18, U.S.C., Sec.
		)	924(d)(1) and Title 28, U.S.C.,
		)	Sec. 2461(c) - Criminal Forfeiture

The United States Attorney charges:

On or about June 7, 2012, within the Southern District of California, defendant JEREMY ADAM DALTON, being a person who had previously been convicted in a court, that is, the Superior Court of Ohio, County of Ohio, of a crime punishable by imprisonment for a term exceeding one year, that is, on or about July 7, 2008, of Possession of Cocaine, in violation of Ohio Revised Code Section 2925.11(A)(C)(4)(b), did knowingly and unlawfully possess, in and affecting interstate commerce, to wit:

- 1) 681 rounds of assorted ammunition;
- 2) one Glock, model 23, .40 caliber pistol, serial number BDB110US;
- 3) one Taurus, model 608, .357 caliber revolver, serial number BT652166;
- 4) one Llama (Gabilondo & CIA), 22 caliber pistol, serial number A33354;

1 5) one Taurus, model PT140 Millennium Pro, .40 caliber  
2 pistol, serial number SYJ45735;

3 6) one Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber  
4 revolver, serial number DM104710;

5 7) one Walther, model P22, .22 caliber pistol, serial  
6 number N017274;

7 8) one Colt, model DELTA ELITE, .10 caliber pistol, serial  
8 number 10SS0832;

9 9) one Glock, model 17, .9 caliber pistol, serial number  
10 KNP396;

11 in violation of Title 18, United States Code, Sections 922(g)(1) and  
12 924(a)(2).

13 FORFEITURE ALLEGATION

14 Upon conviction of the offense alleged in this Information,  
15 defendant JEREMY ADAM DALTON shall forfeit to the United States,  
16 pursuant to Title 18, United States Code, Section 924(d)(1), and  
17 Title 28, United States Code, Section 2461(c), the firearms and  
18 ammunition involved, to wit:

19 1) 681 rounds of assorted ammunition;

20 2) one Glock, model 23, .40 caliber pistol, serial number  
21 BDB110US;

22 3) one Taurus, model 608, .357 caliber revolver, serial  
23 number BT652166;

24 4) one Llama (Gabilondo & CIA), ZZ caliber pistol, serial  
25 number A33354;

26 5) one Taurus, model PT140 Millennium Pro, .40 caliber  
27 pistol, serial number SYJ45735;

28 6) one Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber  
revolver, serial number DM104710;

7) one Walther, model P22, .22 caliber pistol, serial  
number N017274;

8) one Colt, model DELTA ELITE, .10 caliber pistol, serial  
number 10SS0832;

9) one Glock, model 17, .9 caliber pistol, serial number  
KNP396;

1 in violation of Title 18, United States Code, Section 924(d)(1), and  
2 Title 28, United States Code, Section 2461(c).

3 DATED: 11/26/12.

4 LAURA E. DUFFY  
5 United States Attorney

6   
7 RANDY K. JONES  
8 Assistant U.S. Attorney  
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# EXHIBIT C



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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
  
UNITED STATES OF AMERICA, .  
PLAINTIFF, . NO. 12-CR-3367  
V. . APRIL 8, 2013  
JEREMY ADAM DALTON, . 10:24 A.M.  
DEFENDANT. . SAN DIEGO, CALIFORNIA  
. . . . .

TRANSCRIPT OF SENTENCING WITH A PRESENTENCE REPORT  
BEFORE THE HONORABLE ROGER T. BENITEZ  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: U.S. ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF CALIFORNIA  
BY: RANDY JONES, ESQ.  
880 FRONT STREET, ROOM 6293  
SAN DIEGO, CALIFORNIA 92101  
  
FOR THE DEFENDANT: LAW OFFICE OF VIKAS BAJAJ  
BY: VIKAS BAJAJ, ESQ.  
225 BROADWAY, SUITE 2200  
SAN DIEGO, CALIFORNIA 92101  
  
COURT REPORTER: DEBORAH M. O'CONNELL, RPR, RMR, CSR  
333 WEST BROADWAY, SUITE 420  
SAN DIEGO, CALIFORNIA, 92101

REPORTED BY STENOTYPE, TRANSCRIBED BY COMPUTER

1 SAN DIEGO, CALIFORNIA, APRIL 8, 2013, 10:24 A.M.

2 \* \* \* \*

3  
4 THE CLERK: NINE ON CALENDAR, CASE NO. 12-CR-3367,  
5 USA VS. JEREMY ADAM DALTON, SENTENCING WITH A PRESENTENCE  
6 REPORT.

7 MR. JONES: GOOD MORNING, YOUR HONOR. RANDY JONES,  
8 FOR THE UNITED STATES.

9 MR. BAJAJ: GOOD MORNING, YOUR HONOR. VIKAS BAJAJ,  
10 ON BEHALF OF JEREMY DALTON, WHO IS PRESENT.

11 THE COURT: THIS MATTER IS SET FOR SENTENCING TODAY.  
12 I NOTE UNDER *BOOKER*, THE GUIDELINES ARE ADVISORY. I WILL  
13 IMPOSE SENTENCE BASED ON 3553(A) FACTORS.

14 I APOLOGIZE. I'M TAKING A LITTLE LONG. I'M TRYING TO  
15 REREAD THE PRE-SENTENCE REPORT. BUT I HAVE SO MANY SECTIONS  
16 THAT WERE UNDERLINED, IT'S TAKING ME --

17 COUNSEL, I'M LEANING TOWARDS IMPOSING THE HIGH END OF THE  
18 GUIDELINE RANGE IN THIS CASE. AND, FRANKLY, I THINK HE'S  
19 PROBABILITY LUCKY THAT I IMPOSE A SENTENCE WITHIN THE RANGE  
20 THAT HAS BEEN AGREED TO. IT WOULDN'T TAKE ME MUCH TO VARY UP  
21 FROM THAT, JUST SO THAT YOU KNOW.

22 MR. BAJAJ: I UNDERSTAND, YOUR HONOR. AND I'M  
23 ASSUMING THE CONCERNS THAT THE COURT HAS ARE FOCUSED ON THE  
24 PRESENCE OF NARCOTICS IN THE CASE?

25 THE COURT: YOU KNOW WHAT, IT'S NOT NECESSARILY

1 FOCUSED ON THAT. IT'S ACTUALLY -- LIKE I SAID, LOOK AT HOW  
2 MUCH TIME I JUST SPENT TRYING TO GO BACK THROUGH THE UNDERLYING  
3 PORTIONS OF -- I MEAN, FIRST OF ALL, I KNOW THAT DRUGS AND GUNS  
4 ARE AN AWFUL COMBINATION, OKAY. AND ALTHOUGH I AM NOT ASHAMED  
5 TO ADMIT THAT I BELIEVE THAT WE SHOULD INTERPRET THE SECOND  
6 AMENDMENT AS BROADLY AS WE INTERPRET THE FIRST AMENDMENT, I  
7 ALSO UNDERSTAND THAT THERE ARE LIMITS. AND THERE ARE THINGS  
8 ABOUT THE SECOND AMENDMENT THAT -- OR THE CONDUCT OF THIS  
9 DEFENDANT, WHICH, IN MY OPINION, SORT OFF DEFEAT THE WHOLE  
10 PURPOSE OF THE SECOND AMENDMENT.

11 I MEAN, IT IS NOT ONLY THE NUMBER OF WEAPONS THAT HE  
12 OWNED, BECAUSE, YOU KNOW, I DON'T THINK THERE IS ANYTHING IN  
13 THE SECOND AMENDMENT THAT SHOULD LIMIT PEOPLE'S RIGHTS TO OWN  
14 HOWEVER MANY WEAPONS THEY WANT. BUT IT'S THE NATURE OF THE  
15 WEAPONS, AND THE NATURE OF WHERE THE WEAPONS WERE STORED, HOW  
16 THEY WERE CONCEALED, THE ADDITION OF THE DRUGS IN THE DRUG  
17 CONTAINERS, THE FACT THAT THIS GENTLEMAN HAD A T-SHIRT WITH THE  
18 WORD "POLICE" IN BOLD YELLOW LETTERS ACROSS IT. THE FACT THAT  
19 HE HAD DAGGERS. NOW, YOU KNOW, I DON'T KNOW THAT THE SECOND  
20 AMENDMENT PROTECTS DAGGERS. MAYBE IT DOES.

21 BUT, YOU KNOW, I DON'T KNOW THAT I KNOW VERY MANY PEOPLE  
22 WHO HAVE DAGGERS. A KNIFE WITH BRASS KNUCKLES, A LOCK-PICKING  
23 KIT. NOW -- A PAIR OF HANDCUFFS, A PULL-OVER MASK WITH A  
24 SKELETON FACE ON IT, A MILITARY BALLISTIC VEST. I DON'T KNOW,  
25 I COULD JUST GO ON AND ON. I MEAN, IF YOU READ THIS

1 PRE-SENTENCE REPORT, I DON'T KNOW IF MR. DALTON WAS PREPARED TO  
2 GO TO WAR AGAINST THE UNITED STATES OR MEXICO OR SOMEBODY ELSE,  
3 BUT WHATEVER IT WAS HE WAS DOING IS CERTAINLY OUTSIDE OF WHAT I  
4 WOULD CONSIDER TO BE THE REALM OF -- I MEAN, I WOULD IMAGINE  
5 THAT IF YOU EVEN ASK THE PRESIDENT OF THE NRA WHETHER HE WOULD  
6 THINK THIS TO BE NORMAL BEHAVIOR, I SUSPECT THE ANSWER WOULD  
7 PROBABLY BE NO. I MAY BE WRONG. BUT THERE IS SO MUCH HERE, I  
8 COULD GO ON. AND I DON'T HAVE TIME TO DO IT. IT'S VERY  
9 TROUBLING TO ME.

10 MR. BAJAJ: AND I UNDERSTAND THE COURT'S CONCERNS.  
11 AND I WOULD BE REMISS IF I INDICATED THAT I DID NOT PREDICT  
12 SOME SORT OF THIS SENTIMENT BEING PRODUCED THIS MORNING. BUT I  
13 WILL INDICATE TO THE COURT THAT MY CLIENT HAS ATTEMPTED  
14 COOPERATION WITH THE UNITED STATES AND PROVIDED ALL THE  
15 INFORMATION THAT HE POSSIBLY COULD IN THE TWO --

16 THE COURT: I HAVE TAKEN THAT INTO CONSIDERATION,  
17 COUNSEL, SO YOU KNOW. I'VE CONSIDERED THAT, WHICH IS WHY I  
18 SAID, IT WOULDN'T TAKE ME MUCH TO GO ABOVE THE GUIDELINE RANGE.  
19 BUT I'VE CONSIDERED ALL OF THAT, WHICH IS WHY I'M WILLING TO  
20 ADHERE TO THE AGREEMENT THAT HAS BEEN REACHED, BUT NOT GO DOWN  
21 TO THE LOW END OF THE GUIDELINES, OKAY.

22 MR. BAJAJ: I UNDERSTAND. BUT THE REASON WHY I WAS  
23 MAKING REFERENCE TO THE TWO MEETINGS OF ATTEMPTED COOPERATION,  
24 OR THE TWO COOPERATION MEETINGS, AS I WOULD TERM THEM, IS  
25 BECAUSE WE'VE TALKED AT LENGTH AND AD NAUSEAM WITH A

1 REPRESENTATIVE OF THE ATF, AGENT CONNOLLY, WHO, I BELIEVE, HAS  
2 NOW BEEN PUT OUT TO OHIO, INTERESTINGLY ENOUGH.

3 THE COURT: I'M SORRY, HE IS NOW WHAT?

4 MR. JONES: HE'S IN BALTIMORE.

5 MR. BAJAJ: HE IS IN BALTIMORE.

6 THE COURT: I GOT YOU, I UNDERSTAND.

7 MR. BAJAJ: YEAH, HE'S STATIONED OUT IN BALTIMORE.

8 AND ALSO LOCAL LAW ENFORCEMENT, AGENT DAVIES, WITH THE ATF  
9 LIAISON DEPARTMENT. AND A REAL PART OF THE MAGNITUDE AND  
10 MAJORITY OF THE MEETING WAS IN REGARDS TO THE ITEMS THAT THE  
11 COURT JUST REFERENCED IN ORDER TO DISPEL THE NOTION THAT  
12 MR. DALTON WAS, IN FACT, PLANNING, PERHAPS, A ROBBERY OR  
13 SOMETHING OF THAT NATURE. THE EXPLANATION THAT WAS GIVEN TO  
14 THE AGENTS IN OUR PRESENCE WAS ONE THAT AT FIRST BLUSH, WHEN  
15 YOU SEE HIM, WAS SOMEWHAT COMICAL. BUT AT THE SECOND --

16 THE COURT: WAS IT A VIDEO -- THEY WERE GOING TO DO A  
17 VIDEO?

18 MR. BAJAJ: THAT'S CORRECT. AND THERE WAS ALSO --

19 THE COURT: AND YOU CAN DO A VIDEO WITH A WHOLE LOT  
20 LESS THAN WHAT MR. DALTON HAD IN HIS POSSESSION, BELIEVE ME.

21 MR. BAJAJ: AND THERE ARE SOME THINGS, YOUR HONOR,  
22 ABOUT MR. DALTON AND HIS HISTORY THAT ARE NAIVE, TO SAY THE  
23 VERY LEAST, ILL-PLANNED, AND ILL-EXECUTED. THE EXPLANATION OF  
24 THE RAP VIDEO, WHILE IT IS COMICAL AT FIRST BLUSH, IS A  
25 REALISTIC EXPLANATION. I BELIEVE THE AGENTS WHO WERE INVOLVED

1 IN THE INVESTIGATION SATISFIED THEMSELVES THAT WHILE IT WAS NOT  
2 THE BRIGHTEST OF ALL IDEAS, THAT MR. DALTON WAS IN NO WAY,  
3 SHAPE, OR FORM PLANNING TO USE ANY OF THE INDICIA THAT THE  
4 COURT HAD REFERENCED FOR THE FURTHERANCE OF ANY CRIMINAL  
5 ACTIVITY.

6 THE MASKS THAT THE COURT MADE REFERENCE TO WERE MASKS THAT  
7 HE WOULD USE WITH A FEW OF HIS BUDDIES THAT HE HAD GATHERED  
8 TOGETHER IN A MOTORCYCLE RIDING GROUP, AND THEY WOULD PUT THESE  
9 MASKS ON AND FILM THEMSELVES. AND THERE WAS INDICIA IMPOUNDED,  
10 CORROBORATING THE FACT THAT THEY, IN FACT, DID THAT. IS IT  
11 SAFE, IS IT PRACTICAL, IS IT SOMETHING THAT WE EXPECT --

12 THE COURT: WAIT, THEY WORE THESE SKULL-FACED COVERED  
13 MASKS WHILE RIDING MOTORCYCLES?

14 MR. BAJAJ: THAT'S CORRECT, YOUR HONOR. NOW I DIDN'T  
15 BELIEVE -- I SHOULDN'T SAY --

16 THE COURT: I ASSUME THESE ARE DIRT BIKES?

17 MR. BAJAJ: THESE ARE MOTORCYCLES THAT ARE ACTUALLY  
18 ON THE PUBLIC HIGHWAYS. THEY'RE ROAD BIKES.

19 THE COURT: ON PUBLIC HIGHWAYS, OKAY. I SEE. SO  
20 IT'S SORT OF LIKE, INSTEAD OF THE HELLS ANGELS OR THE MONGOLS,  
21 IT'S, WHAT, THE SKELETONS? YOU KNOW, THIS IS GETTING MORE AND  
22 MORE FAR-FETCHED.

23 MR. BAJAJ: YOU KNOW, AND I DIDN'T -- I CAN'T SAY  
24 THAT I HAD A FULL BELIEF IN MY CLIENT'S RENDITION OF WHAT  
25 ACTUALLY OCCURRED UNTIL I SAW PEOPLE ON THE HIGHWAY WEARING THE

1 VERY SAME THINGS ON MY WAY TO SAN CLEMENTE THE OTHER DAY. I  
2 WILL INDICATE TO THE COURT, HOWEVER, THAT MR. DALTON'S CASE IS  
3 SOMEWHAT OF A PARADOX. ON THE ONE SIDE, YOUR HONOR, HE IS A  
4 26-YEAR-OLD INDIVIDUAL, WHO HAS AN ENORMOUS AMOUNT OF FAMILY  
5 SUPPORT. HIS FAMILY IS INVOLVED IN SUBSTANTIAL CHARITABLE  
6 ORGANIZATIONS. THEY'VE DEDICATED UPWARDS OF \$4 MILLION SINCE  
7 1999 TOWARDS A BUILDING OF HOSPITALS FOR WOMEN AND CHILDREN IN  
8 FOREIGN COUNTRIES, INCLUDING, BUT NOT LIMITED TO, GUATEMALA.

9 HIS FATHER IS PRESENT IN COURT AS WELL. IF HE CAN RAISE  
10 HIS RIGHT HAND. THAT'S ARTHUR RAY DALTON. HE'S FLOWN IN FROM  
11 OHIO, AS A REPRESENTATIVE OF THE FAMILY, TO INDICATE HIS  
12 SUPPORT, WHICH IS SUBSTANTIAL AND PERMANENT ON BEHALF OF HIS  
13 FAMILY.

14 HE HAS DONE THE RIGHT THINGS SINCE THE ARREST. HE HAS NOT  
15 SUFFERED ONE VIOLATION IN ANY WAY, VIOLATING THE ORDER OF  
16 PRETRIAL RELEASE. HE HAS RE-ENGAGED HIMSELF IN CHARITABLE  
17 ORGANIZATIONS THAT HE HAS BEEN A PART OF HIS ENTIRE LIFE. HE  
18 HAS REKINDLED THE CONNECTIONS THAT HAVE BEEN VERY STRONG WITH  
19 HIS FAMILY IN OHIO, SPENDING A SIGNIFICANT AMOUNT OF TIME WITH  
20 HIS NIECES AND NEPHEWS AND HIS EXTENDED FAMILY.

21 HIS CASE IS A VERY UNIQUE CASE. BECAUSE UNLIKE MANY  
22 PEOPLE THAT WE DEAL WITH IN COURT, MR. DALTON DOES HAVE THE  
23 TOOLS TO TURN THIS AROUND AND TO REHABILITATE HIMSELF AND TO  
24 MAKE SURE HE CAN, A, TAKE CARE OF THE NARCOTICS, USE AND ABUSE,  
25 WHICH HAS BEEN PRESENT FOR OVER A DOZEN YEARS IN HIS LIFE,

1 STARTING OFF, AS THE COURT ALLUDED TO, A COUPLE CASES AGO, WITH  
2 THE USE OF MARIJUANA, GRADUATING TO COCAINE, OXYCODONE, AND A  
3 MYRIAD OF OPIATES THAT WERE FOUND DURING THE EXECUTION OF THE  
4 SEARCH WARRANT IN HIS APARTMENT HERE IN SAN DIEGO.

5 HE IS AN INDIVIDUAL WHO HAS SUFFERED SIGNIFICANTLY FROM  
6 NARCOTICS ABUSE. AND IT'S SOMETHING, UNFORTUNATELY, HIS FAMILY  
7 HAS HAD TO DEAL WITH, SOMETHING HE WAS EMBARRASSED ABOUT, BUT  
8 SOMETHING THE FAMILY NOW BELIEVES THAT HE NEEDS SUPPORT AND  
9 HELP IN ADDRESSING. SO WE WOULD FURTHER THE PROBATION  
10 DEPARTMENT'S RECOMMENDATION FOR THE RDAP PROGRAM. WHATEVER THE  
11 COURT SENTENCE MAY BE, I THINK IT'S SOMETHING THAT COULD HELP.

12 HE HAS STRONG FAMILY TIES. HE'S FULLY EMPLOYED. HE WAS  
13 MAKING DECENT MONEY UP UNTIL THE TIME OF HIS ARREST. THE  
14 CONSEQUENCE OF THE ARREST IS THAT HE HAS HAD TO, IN ESSENCE,  
15 DIVULGE HIS INTEREST IN THE CORPORATION, RADIOGRAPHICS LIMITED  
16 HERE. IT IS A MEDICAL SUPPLY COMPANY THAT HE WAS BROUGHT OUT  
17 HERE IN 2010 TO START WITH HIS PARTNER, WHO WAS THE ULTIMATE  
18 RECIPIENT OF THE WEAPONS THAT WERE ACTUALLY INSIDE THE STORAGE  
19 UNIT. THIS INFORMATION WAS GIVEN TO THE AGENTS AT THE SECOND  
20 DEBRIEF THAT WE HAD AT THE END OF NOVEMBER LAST YEAR.

21 HE HAS THE TOOLS TO TURN IT AROUND, YOUR HONOR. HE HAS  
22 THE TOOLS TO SEEK THE PROPER REHABILITATION, TO BE -- CONTINUE  
23 BEING A BREAD-WINNING MEMBER OF SOCIETY AND A PERSON WHO  
24 CONTRIBUTES SIGNIFICANTLY.

25 HIS OWN DONATIONS TO THE CHARITABLE ORGANIZATIONS ARE



1 PROBABLY SOMEWHERE UPWARDS OF 60 TO 65 PERCENT OF EACH PAYCHECK  
2 THAT HE HAS HAD SINCE THIS CASE HAS COME AROUND, HAS GONE  
3 TOWARDS THE CHARITABLE ORGANIZATIONS THAT HIS FAMILY SUPPORTS.

4 HE HAS ALSO SPENT A SIGNIFICANT AMOUNT OF TIME WITH THE  
5 CHARITABLE DONATIONS, FEEDING THE POOR IN THE AREA IN OHIO  
6 WHERE HE LIVES. THE COURT HAS READ ALL THE FILINGS, ALL THE  
7 LETTERS OF SUPPORT, WHICH ARE SUBSTANTIAL, WHICH ARE  
8 SIGNIFICANT, AND I THINK SHOULD IN MANY WAYS INFLUENCE THE  
9 COURT'S IMPRESSION OF WHO MR. DALTON IS AS A PERSON OTHER THAN  
10 THE FIREARMS THAT WE'RE DEALING WITH TODAY.

11 THE ONLY ADDITIONAL RECOMMENDATION WE WOULD HAVE, YOUR  
12 HONOR, FOR A REQUEST, WOULD BE FOR PLACEMENT IN THE  
13 NORTHEASTERN REGION SO HE CAN BE CLOSE TO HIS FAMILY, HIS  
14 EXTENDED FAMILY IN OHIO. AND I KNOW MR. DALTON WOULD ALSO LIKE  
15 TO ADDRESS THE COURT.

16 THE COURT: ALL RIGHT, MR. DALTON, YOU HAVE A RIGHT  
17 TO ADDRESS THE COURT BEFORE I IMPOSE SENTENCE. IS THERE  
18 ANYTHING YOU WANT TO SAY?

19 THE DEFENDANT: YES, YOUR HONOR. I WOULD LIKE TO  
20 START BY APOLOGIZING, OBVIOUSLY, TO THE COURT AND TO MY FAMILY.  
21 THESE CHARGES ARE NOT REPRESENTATIVE OF WHO I AM AS A PERSON.  
22 OBVIOUSLY, IT'S A VERY LARGE MISTAKE, AND I TAKE COMPLETE --  
23 ACCEPT COMPLETE RESPONSIBILITY FOR IT. IT IS NOBODY'S FAULT  
24 BUT MY OWN FOR BEING IN THIS SITUATION. I NEVER INTENDED TO  
25 HURT ANYBODY OR CAUSE ANYBODY HARM. OBVIOUSLY, I'VE CAUSED A

1 LOT OF PEOPLE EMOTIONAL HARM, BUT I NEVER MEANT TO CAUSE  
2 ANYBODY ANY PHYSICAL HARM.

3 I DO BELIEVE THAT MY FAMILY AND MY STRONG FAMILY UNIT -- I  
4 HAVE THE TOOLS TO TURN THIS SITUATION AROUND AND NOT BE A  
5 BURDEN ON SOCIETY BUT TRY TO BE A PRODUCTIVE MEMBER OF SOCIETY.

6 THE COURT: OKAY. DOES THE GOVERNMENT HAVE ANYTHING?

7 MR. JONES: YES, YOUR HONOR. YOUR HONOR, THE  
8 GOVERNMENT AGREES THAT THIS CASE IS QUITE A PARADOX. THE  
9 DEFENDANT HAS A -- AS YOU'VE HEARD, GREAT FAMILY SUPPORT. HE  
10 IS WELL OFF FINANCIALLY. HE HAS SOCIO-ECONOMIC FACTORS THAT  
11 THE COURT DOESN'T NORMALLY SEE IN THESE TYPES OF CASES. BUT AT  
12 THE SAME TIME, WHAT IS TROUBLING IS NOT ONLY THE AMOUNT OF  
13 WEAPONS AND AMMUNITION AND THE DRUGS THAT ARE INVOLVED IN THE  
14 CASE, BUT THE DEFENDANT ALSO HAD A PRIOR RECORD, A CRIMINAL  
15 RECORD, WHICH CONSISTS OF FELONIOUS ASSAULT AND DRUG  
16 TRAFFICKING OR DRUG POSSESSION.

17 AND WITH RESPECT TO ALL THE OTHER ITEMS THAT WERE FOUND IN  
18 THE STORAGE UNIT IN HIS APARTMENT, AND IN SPEAKING WITH HIM, IN  
19 TRYING TO GET AN EXPLANATION, YOU KNOW, THE EXPLANATION HE'S  
20 GIVEN, I THINK WE ARE GIVING HIM THE BENEFIT OF THE DOUBT. BUT  
21 ONE COULD ALSO SAY THAT IT HAD SOMETHING TO DO WITH THIS NOTION  
22 OF WANTING TO BE SOME SORT OF GANGSTER, SORT OF A WANNA-BE  
23 GANGSTER. HE WAS HANGING OUT WITH THE WRONG FOLKS, FOLKS WHO  
24 WERE INVOLVED IN SOME VERY SERIOUS ACTIVITY.

25 AND FOR THAT REASON, THE GOVERNMENT FINDS THIS CASE TO BE

1 SOMEWHAT TROUBLING AND CONCERNING. BUT HAVING SAID ALL OF  
2 THAT, AS WE SAID BEFORE, WE'VE GIVEN HIM THE BENEFIT OF THE  
3 DOUBT, AND THAT'S WHY WE'RE MAKING THE RECOMMENDATION OF THE  
4 LOW END OF THE GUIDELINES.

5 THE COURT: PROBATION HAVE ANYTHING?

6 PROBATION OFFICER: I HAVE NO ADDITIONAL INFORMATION,  
7 YOUR HONOR.

8 THE COURT: BOY, YOU KNOW, THIS IS JUST SUCH A  
9 TROUBLING CASE. IT SEEMS THAT MR. DALTON DOES HAVE FAMILY  
10 SUPPORT. AND UNLIKE SO MANY PEOPLE THAT APPEAR BEFORE ME, THAT  
11 DON'T HAVE ANY ASSETS OR FINANCIAL RESOURCES TO RELY ON, I LOOK  
12 AT HIS FINANCIAL STATEMENTS, FOR EXAMPLE, AND NOW I HEAR ABOUT  
13 HIS FAMILY. APPARENTLY, HE HAS A WEALTHY FAMILY, AND WHICH  
14 LEADS ME TO CONCLUDE THAT MONEY AND FINANCIAL STATUS REALLY  
15 HAVE VERY LITTLE BEARING ON CRIMINAL BEHAVIOR.

16 YOU KNOW, BESIDES THE THINGS THAT I HAD POINTED OUT --  
17 YEAH, I NOTED IN HIS PAST CRIMINAL HISTORY, HE HAD A FELONIOUS  
18 ASSAULT AT THE AGE OF 19. AND THEN, AT THE AGE OF 21, HE WAS  
19 CONVICTED OF POSSESSION OF COCAINE. AND WHAT I NOTED ABOUT  
20 THAT, THAT I THOUGHT WAS INTERESTING, WAS NOT ONLY THAT HE WAS  
21 IN POSSESSION OF COCAINE, BUT I NOTICED THAT HE HAD TO BE  
22 TASERED TWICE IN ORDER TO BRING MR. DALTON INTO COMPLIANCE. I  
23 HAVE NEVER BEEN TASERED, BUT FROM WHAT I'VE HEARD, IT'S NOT A  
24 PLEASANT THING TO GO THROUGH. AND YOU HAD TO GO THROUGH IT  
25 TWICE IN ORDER TO BE SUBDUED.

1           YOU KNOW, WHEN YOU PUT ALL THIS TOGETHER, YOU PUT -- HERE  
2 MR. DALTON, AS HE STANDS BEFORE ME -- AND HE REALLY SEEMS TO BE  
3 A NICE MAN, YOU KNOW, REMORSEFUL AND ARTICULATE, AND SO ON.  
4 BUT HIS BEHAVIOR IS SO, SO, SO OUT OF THE ORDINARY, SO STRANGE.  
5 AGAIN, IT IS NOT THE NUMBER OF WEAPONS THAT HE HAD. THAT  
6 DOESN'T BOTHER ME AT ALL, UNLIKE SOME PEOPLE, WHO WOULD REALLY  
7 GET INTO A TIZZY OVER THAT. BUT IT'S THE MANNER OF THE  
8 POSSESSION OF THE WEAPONS AND THE OTHER THINGS THAT GO WITH IT  
9 THAT CAUSE ME SUCH A CONCERN.

10           NOW I NOTED -- SOMETHING ELSE I FOUND INTERESTING ABOUT  
11 THIS CASE. I NOTED THAT HE STARTED USING MARIJUANA WHEN HE WAS  
12 IN COLLEGE. AND THEN, I GUESS, HE SORT OF HAS GRADUATED -- I  
13 NOTED, INTERESTINGLY ENOUGH, BY THE WAY, THAT THE 2007  
14 CONVICTION FOR POSSESSION OF COCAINE, I THINK THAT'S THE ONE  
15 THAT RESULTED FROM HIM BEING IN A VEHICLE WITH SOMEONE ELSE AND  
16 THEY WERE SMOKING MARIJUANA IN THE VEHICLE. AND THE SMOKE WAS  
17 COMING OUT OF THE VEHICLE.

18           AND, APPARENTLY, THE OFFICERS -- SOME LAW ENFORCEMENT  
19 OFFICERS NOTICED THE PLUME OF SMOKE COMING OUT OF THE VEHICLE,  
20 SO THEY ATTEMPTED TO ARREST HIM. AND THEN HE TRIED TO RUN AWAY  
21 AND WOUND UP BEING TASERED TWICE, WHICH SIMPLY GOES TO SHOW  
22 THAT NOTHING GOOD COMES OUT OF SMOKING MARIJUANA, NOT JUST THE  
23 FACT THAT YOU'RE LIKELY TO BECOME ADDICTED TO SOMETHING ELSE,  
24 BUT ALSO THE POSSIBILITY THAT YOU COULD WIND UP BEING TASERED  
25 AND ARRESTED FOR RESISTING ARREST, ETC.

1 IT'S AN INTERESTING -- IT'S JUST A VERY INTERESTING,  
2 INTERESTING CASE. ALL IN ALL, THOUGH, I THINK WHEN I LOOK AT  
3 THE 3553(A) FACTORS, I DON'T KNOW THAT THIS WILL REALLY, REALLY  
4 WORK, BUT I THINK THAT, YOU KNOW, I JUST CAN'T GO ALONG WITH  
5 THE LOW END OF THE GUIDELINE RANGE. THERE IS SOMETHING ABOUT  
6 THIS CASE, AND I CAN'T QUITE REALLY -- AT THE RISK OF HAVING  
7 JUDGE KOZINSKI, MY GOOD FRIEND, TELL ME ONCE AGAIN THAT I  
8 CANNOT USE MY OLFACTORY NERVE TO DECIDE WHAT THE LAW IS, THERE  
9 IS SOMETHING ABOUT THIS CASE THAT JUST DOESN'T SMELL RIGHT.  
10 AND, I GUESS -- NO PUN INTENDED GIVEN THAT I WAS JUST TALKING  
11 ABOUT THE PLUME OF SMOKE OF MARIJUANA.

12 BUT IN ANY EVENT, THERE IS SOMETHING ABOUT THIS CASE THAT  
13 IS TROUBLING, AND I CAN'T QUITE PUT MY FINGER ON IT.

14 WHAT I CAN SAY IS, THAT AFTER LOOKING AT ALL THE 3553(A)  
15 FACTORS, AND TRYING TO SIFT THROUGH ALL OF THIS, AND TRYING TO  
16 FIGURE OUT WHAT MAKES SENSE, I'M SATISFIED THAT MY TENTATIVE IS  
17 APPROPRIATE, STILL HONORING THE AGREEMENT OF THE PARTIES, BUT  
18 YET IMPOSING A SENTENCE THAT I HOPE, HOPE WILL ACT AS A FURTHER  
19 DETERRENT.

20 SO I'LL GO THROUGH THE GUIDELINE CALCULATIONS. THESE ARE  
21 THE GUIDELINE CALCULATIONS THAT I BELIEVE WERE AGREED TO: THIS  
22 IS A BASE OFFENSE LEVEL OF 20, INCREASED BY FOUR LEVELS, UNDER  
23 2K2.1(B)(1)(B). THE GOVERNMENT AGREED TO A THREE-LEVEL  
24 REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY. HE HAS A CRIMINAL  
25 HISTORY SCORE 3; CRIMINAL HISTORY CATEGORY 2. RESULTS IN AN

1 ADJUSTED OFFENSE LEVEL OF 21, WITH A GUIDELINE RANGE OF 41 TO  
2 51 MONTHS.

3 AFTER CONSIDERING ALL THE 3553(A) FACTORS, I'M SATISFIED  
4 THAT 51 MONTHS IS REASONABLE AND SUFFICIENT, BUT NOT GREATER  
5 THAN NECESSARY. SO I'LL REMAND HIM TO THE CUSTODY OF BUREAU OF  
6 PRISONS FOR A PERIOD OF 51 MONTHS.

7 NOW AGAIN, LET ME JUST SAY WHAT I SAID A FEW MINUTES AGO.  
8 IF CONGRESS REALLY, REALLY, REALLY, REALLY IS SERIOUS ABOUT  
9 TRYING TO MINIMIZE GUN VIOLENCE, YOU KNOW, THEY REALLY SHOULD  
10 SERIOUSLY THINK ABOUT INCREASING THE PERIOD OF SUPERVISED  
11 RELEASE THAT IS AVAILABLE TO US. BECAUSE IN THE END -- HERE  
12 IS -- WHAT I DO WHEN I IMPOSE SENTENCE, I LOOK AT TWO FACTORS  
13 THAT I THINK ARE REALLY, REALLY IMPORTANT IN DECIDING WHAT A  
14 SENTENCE SHOULD BE. NO. 1, WHAT CAN WE DO TO DETER THIS  
15 INDIVIDUAL AND OTHER INDIVIDUALS FROM ENGAGING IN CRIMINAL  
16 BEHAVIOR, CAUSING THEM TO RETURN TO A LAW-ABIDING LIFE?

17 AND WE CAN -- AND THE SECOND ONE IS PROTECTION OF THE  
18 PUBLIC. THOSE TWO THINGS I CALL THE CONJOINED TWINS. BECAUSE  
19 I COULD IMPOSE A LESSER PERIOD OF CUSTODIAL SENTENCE TO BEGIN  
20 WITH IF I HAVE A LONGER PERIOD OF SUPERVISED RELEASE AT THE  
21 TAIL END THAT WILL ALLOW ME TO MAKE SURE THAT THIS INDIVIDUAL,  
22 A, DOESN'T CAUSE HARM TO THE PUBLIC AND IS RETURNING TO A  
23 LAW-ABIDING LIFE.

24 SO I CAN IMPOSE A LESSER TERM UP FRONT, WITH LONGER  
25 SUPERVISED RELEASE. OR IF I DON'T HAVE A LONG PERIOD OF

1 SUPERVISED RELEASE, THEN, YOU KNOW, I'M CALLED UPON TO IMPOSE A  
2 HIGHER SENTENCE AT THE BEGINNING. THAT'S THE WAY I SEE THOSE  
3 TWO FACTORS WORKING.

4 NOW, AGAIN, IF CONGRESS IS SERIOUS ABOUT MINIMIZING GUN  
5 VIOLENCE, WELL, HERE IS THE WAY TO DO IT: INCREASE THE PERIOD  
6 OF SUPERVISED RELEASE THAT IS AVAILABLE TO US. IF I HAD A  
7 LONGER PERIOD OF SUPERVISED RELEASE AVAILABLE TO ME, THERE IS A  
8 POSSIBILITY THAT I WOULD IMPOSE THE 41 MONTHS THAT WAS AGREED  
9 TO BY EVERYONE, BUT I DON'T HAVE THAT. I'M LIMITED TO THREE  
10 YEARS, WHICH, IN MY OPINION, IS INSUFFICIENT.

11 BUT THAT BEING THE CASE, BEING THAT THREE YEARS IS THE MAX  
12 I CAN IMPOSE, I'LL IMPOSE A THREE-YEAR TERM OF SUPERVISED  
13 RELEASE. AS A CONDITION OF SUPERVISED RELEASE, MR. DALTON WILL  
14 OBEY ALL LAWS, INCLUDING STATE, LOCAL, AND FEDERAL.

15 HE'LL COMPLY WITH ALL STANDARD AND MANDATORY CONDITIONS OF  
16 SUPERVISED RELEASE, INCLUDING THE FOLLOWING: HE'LL PROVIDE  
17 COMPLETE DISCLOSURE OF PERSONAL, BUSINESS, FINANCIAL RECORDS TO  
18 THE PROBATION OFFICER AS REQUESTED. HE'LL PARTICIPATE IN A  
19 PROGRAM OF DRUG OR ALCOHOL ABUSE TREATMENT, INCLUDING  
20 URINALYSIS OR SWEAT PATCH TESTING AND COUNSELING, AS DIRECTED  
21 BY THE PROBATION OFFICER. AND HE'LL ALLOW FOR RECIPROCAL  
22 RELEASE OF INFORMATION BETWEEN THE PROBATION OFFICER AND THE  
23 TREATMENT PROVIDER.

24 HE'LL BE REQUIRED TO CONTRIBUTE TO THE COSTS OF SERVICES  
25 RENDERED IN AN AMOUNT TO BE DETERMINED BY THE PROBATION

1 OFFICER, BASED ON HIS ABILITY TO PAY. HE'LL REPORT ALL  
2 VEHICLES OWNED OR OPERATED, OR IN WHICH HE HAS AN INTEREST TO  
3 HIS PROBATION OFFICER.

4 HE'LL SUBMIT HIS PERSON, HIS RESIDENCE, HIS OFFICE, OR HIS  
5 VEHICLE TO A SEARCH CONDUCTED BY A UNITED STATES PROBATION  
6 OFFICER IN A REASONABLE TIME AND IN A REASONABLE MANNER, BASED  
7 UPON REASONABLE SUSPICION OF CONTRABAND OR EVIDENCE OF A  
8 VIOLATION OF A CONDITION OF RELEASE. FAILURE TO SUBMIT TO A  
9 SEARCH MAY BE GROUNDS FOR REVOCATION. AND THE DEFENDANT SHALL  
10 WARN ANY OTHER RESIDENTS THAT THE PREMISES MAY BE SUBJECT TO  
11 SEARCHES PURSUANT TO THIS CONDITION.

12 NOW JUST TO BE SURE THAT WE'RE ON THE SAME PAGE, ALSO,  
13 MR. DALTON, I'M GOING TO ORDER THAT YOU NOT OWN, POSSESS,  
14 BORROW, OR IN ANY OTHER WAY HAVE CONTROL OF ANY FIREARM, ANY  
15 FIREARM, WHATSOEVER, OR ANY AMMUNITION, OR ANY OTHER CONTROLLED  
16 WEAPON. YOU MAY NOT HAVE IN YOUR POSSESSION, NOT EVEN  
17 MOMENTARILY, YOU CAN'T EVEN HOLD IT IN YOUR HAND, A DAGGER, OR  
18 BRASS KNUCKLES, OR A PISTOL, OR SHOTGUN, OR RIFLE, OR ANYTHING  
19 OF THAT SORT. IF YOU DO, THAT WILL BE A VIOLATION OF  
20 SUPERVISED RELEASE. AND I ASSURE YOU, I'M PUTTING A LOT OF  
21 TRUST IN YOU. AS I SAID, IT WOULDN'T TAKE ME VERY MUCH TO  
22 IMPOSE A HIGHER SENTENCE THAN THE ONE I'VE IMPOSED ALREADY.

23 BUT I'M PUTTING TRUST IN YOU THAT YOU ARE THE PERSON THAT  
24 I AM TOLD THAT YOU ARE AND THAT YOU TELL ME THAT YOU ARE. IF I  
25 FIND OUT THAT YOU'RE ANYWHERE WHERE THERE IS AMMUNITION, OR ONE



1 OF THESE WEAPONS AT ANY TIME, AND YOU GET CAUGHT, YOU'RE GOING  
2 TO COME BACK TO SEE ME. AND AT THAT POINT IN TIME, I'M GOING  
3 TO IMPOSE THE HIGHEST SENTENCE THAT THE LAW ALLOWS ME TO IMPOSE  
4 FOR YOUR VIOLATION OF SUPERVISED RELEASE. IN THIS CASE, IT  
5 WILL BE THREE YEARS. DO YOU UNDERSTAND THAT?

6 THE DEFENDANT: YES, YOUR HONOR.

7 THE COURT: OKAY. SO I WANT YOU TO DO WHAT YOUR  
8 FATHER EXPECTS OF YOU, WHAT YOU SHOULD EXPECT OF YOURSELF,  
9 WHICH IS TO RETURN TO A LAW-ABIDING LIFE, WHERE YOU CAN EARN A  
10 GOOD INCOME, MAKE YOURSELF PROUD, MAKE YOUR FAMILY PROUD. AND  
11 ALL YOU HAVE TO DO IS STAY AWAY FROM GUNS, STAY AWAY FROM  
12 AMMUNITION, STAY AWAY FROM WEAPONS. AND, OF COURSE, STAY AWAY  
13 FROM DRUGS, DON'T SUBMIT DRUG TESTS THAT ARE DIRTY, ETC., ETC.

14 YOU DO ALL OF THAT, AND AT THE END OF THREE YEARS,  
15 MR. DALTON, YOU'RE GOING TO GO BACK TO HAVING A GOOD LIFE.  
16 YOU'RE A YOUNG MAN. YOU HAVE A LOT OF TIME AHEAD OF YOU,  
17 BELIEVE ME. AND LIFE CAN BE SO GOOD. AND YOU DON'T NEED  
18 DRUGS, AND YOU DON'T NEED GUNS, AND YOU DON'T NEED KNIVES, AND  
19 YOU DON'T NEED BRASS KNUCKLES IN ORDER TO HAVE A GOOD LIFE.  
20 YOU REALLY CAN.

21 NOW WITH REGARDS TO A FINE, I THINK HE HAS THE ABILITY TO  
22 PAY A FINE. PROBATION IS RECOMMENDING A FINE OF \$10,000, WHICH  
23 I BELIEVE IS REASONABLE UNDER THE CIRCUMSTANCES. I'LL ORDER  
24 THAT HE PAY A FINE OF \$10,000, PLUS \$100 SPECIAL ASSESSMENT.  
25 AND THAT WILL BE PAID FORTHWITH. AND DURING ANY PERIOD OF

1 INCARCERATION, HE'LL PAY THE FINE THROUGH THE INMATE FINANCIAL  
2 RESPONSIBILITY PROGRAM, AT THE RATE OF 50 PERCENT OF  
3 DEFENDANT'S INCOME, OR NOT LESS THAN \$25 PER QUARTER, WHICHEVER  
4 IS GREATER.

5 HE'LL PAY THE FINE DURING HIS SUPERVISED RELEASE PERIOD AT  
6 THE RATE OF \$500 PER MONTH OR MORE, AND THE PAYMENTS WILL BE  
7 SCHEDULED THROUGH THE DISTRICT COURT CLERK FOR THE SOUTHERN  
8 DISTRICT OF CALIFORNIA.

9 UNTIL THE FINE HAS BEEN PAID, HE'LL NOTIFY THE CLERK OF  
10 THE COURT AND THE UNITED STATES ATTORNEY'S OFFICE OF ANY CHANGE  
11 IN HIS MAILING OR RESIDENCE ADDRESS, AS WELL AS ANY BUSINESS OR  
12 EMPLOYMENT THAT HE MAY HAVE. AND HE SHALL DO SO NOT LATER THAN  
13 30 DAYS AFTER THE CHANGE OCCURS.

14 NOW, I DON'T REMEMBER IF THERE WAS A RECOMMENDATION FOR --  
15 RIGHT, THERE IS A RECOMMENDATION THAT HE BE PLACED IN THE RDAP  
16 PROGRAM, WHICH I THINK WOULD BE HELPFUL TO HIM, HOPEFULLY TO  
17 HELP HIM BREAK ANY DRUG ADDICTION THAT HE MAY HAVE.

18 ALTHOUGH, I SUSPECT HE'S PROBABLY WELL ON HIS WAY -- HE'S  
19 BEEN ON PRETRIAL RELEASE SINCE THIS CASE STARTED, RIGHT?

20 MR. BAJAJ: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: AND I ASSUME HE HASN'T SUBMITTED ANY  
22 DIRTY TESTS; OTHERWISE, THEY WOULD HAVE VIOLATED HIM, RIGHT?

23 YEAH, SO I THINK HE'S WELL ON HIS WAY OF BREAKING THAT  
24 ADDICTION. I HOPE HE DOES.

25 SO ANYWAY, NOW I WILL RECOMMEND THAT HE BE HOUSED IN THE

1 NORTHEASTERN PORTION OF THE UNITED STATES SO HE CAN BE CLOSE TO  
2 HIS FAMILY. I'M GOING TO TAKE A WILD GUESS, BUT MY WILD GUESS  
3 IS GOING TO BE THAT YOU'RE GOING TO ASK FOR SELF-SURRENDER?

4 MR. BAJAJ: THAT WOULD BE A GREAT GUESS, YOUR HONOR.  
5 IN THIS INSTANCE, YOU ARE CORRECT, I WOULD.

6 THE COURT: ALL RIGHT. WELL, APPARENTLY, HE'S  
7 BEHAVED WELL DURING PRETRIAL RELEASE.

8 ANYBODY HAVE ANY OBJECTION?

9 MR. JONES: NONE FROM THE GOVERNMENT, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 PROBATION OFFICER: YOUR HONOR, TO MAKE SURE, I'M  
12 WITH PROBATION, NOT PRETRIAL, JUST SO YOU --

13 THE COURT: I GUESS WE DON'T HAVE ANYBODY FROM  
14 PRETRIAL.

15 ALL RIGHT, I WILL ORDER, BY THE WAY, FORFEITURE OF THE  
16 WEAPONS THAT WERE -- I GUESS I ALREADY SIGNED THE ORDER.

17 MR. JONES: YEAH, THERE WAS A PRELIMINARY ORDER, YOUR  
18 HONOR, OF THE WEAPONS AND THE AMMUNITION.

19 THE COURT: I THOUGHT THIS WAS THE FINAL ORDER?

20 MR. JONES: YEAH, THAT IS WHAT WE NEED, THE FINAL  
21 ORDER.

22 THE COURT: ISN'T THAT WHAT I ALREADY SIGNED IN  
23 JANUARY?

24 MR. BAJAJ: THAT'S CORRECT. THE COURT HAD ALREADY  
25 SIGNED IT.

1 THE COURT: YEAH, I ALREADY SIGNED IT.

2 MR. JONES: OKAY.

3 THE COURT: OKAY. ALL RIGHT, SO HOW ABOUT SIX WEEKS?

4 MR. BAJAJ: THAT IS FINE.

5 THE COURT: WILL THAT WORK? OKAY. I'LL ORDER THAT  
6 HE SELF-SURRENDER TO THE DESIGNATED INSTITUTION BY NOT LATER  
7 THAN --

8 GIVE ME A DATE, GLENN, PLEASE.

9 THE CLERK: 5:00 P.M., MAY 17. BOND EXONERATION WILL  
10 BE HERE MAY 20TH, AT 2:00 P.M.

11 THE COURT: OKAY. I'LL ORDER THAT HE REPORT DOWN TO  
12 THE MARSHAL'S OFFICE BY NOT LATER THAN 4:00 P.M. THIS AFTERNOON  
13 IN ORDER TO BE DESIGNATED, BOOKED, AND ALL OF THAT, OKAY.

14 ALL RIGHT. NOW, COUNSEL, DO YOU ACKNOWLEDGE THAT HE'S  
15 WAIVED HIS RIGHT TO APPEAL AND COLLATERAL ATTACK.

16 MR. BAJAJ: YES, YOUR HONOR.

17 THE COURT: MR. DALTON, DO YOU ACKNOWLEDGE THAT  
18 YOU'VE WAIVED YOUR RIGHT TO APPEAL AND COLLATERAL ATTACK?

19 THE DEFENDANT: YES, YOUR HONOR.

20 THE COURT: I WISH YOU NOTHING BUT THE BEST. I HOPE  
21 YOU TAKE THIS OPPORTUNITY TO IMPROVE YOUR LIFE AND THE LIFE OF  
22 YOUR FAMILY. AND I HOPE THAT I DON'T SEE YOU BACK HERE IN  
23 COURT AGAIN, OKAY.

24 THE DEFENDANT: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT, YOU TAKE CARE.

1 MR. BAJAJ: THANK YOU, YOUR HONOR.

2 THE COURT: THANK YOU.

3 THE CLERK: REMAINING UNDERLYING COUNTS, JUDGE.

4 THE COURT: YES. IS THERE A MOTION TO DISMISS THE  
5 REMAINING COUNTS?

6 MR. JONES: SO MOVED, YOUR HONOR.

7 THE COURT: ALL RIGHT, THEY'LL BE DISMISSED. THANK  
8 YOU.

9 (RECESS AT 10:54 A.M.)

10 ---000---

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## C-E-R-T-I-F-I-C-A-T-I-O-N

I HEREBY CERTIFY THAT I AM A DULY APPOINTED,  
QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT  
TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE;  
THAT SAID TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPTION OF MY  
STENOGRAPHIC NOTES; AND THAT THE FORMAT USED HEREIN COMPLIES  
WITH THE RULES AND REQUIREMENTS OF THE UNITED STATES JUDICIAL  
CONFERENCE.

DATED: MAY 25, 2016, AT SAN DIEGO, CALIFORNIA

S/DEBORAH M. O'CONNELL, CSR #10563  
REGISTERED PROFESSIONAL REPORTER

# EXHIBIT D

AO 245B (CASD) (Rev. 12/11) Judgment in a Criminal Case

Sheet 1

FILED

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

2013 APR 11 AM 10:39

CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987) \_\_\_\_\_ DEPUTY

JEREMY ADAM DALTON (1)

Case Number: 12CR3367-BEN

VIKAS BAJAJ

Defendant's Attorney

REGISTRATION NO. 34594298

☐

THE DEFENDANT:

☒ pleaded guilty to count(s) 1s OF THE SUPERSEDING INFORMATION.☐

was found guilty on count(s) \_\_\_\_\_

after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
18 USC 922(g)(1) and 924(a)(2)	FELON IN POSSESSION OF FIREARMS AND AMMUNITION	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_
- ☒ Count(s) UNDERLYING INFORMATION is ☒ are ☐ dismissed on the motion of the United States.
- ☒ Assessment: \$100.00 forthwith or under the same repayment terms for the fine as set forth in page 5 of this Judgment and Commitment.

- ☐ Fine waived ☒ Forfeiture pursuant to order filed JANUARY 15, 2013, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

APRIL 8, 2013

Date of Imposition of Sentence

HON. ROGER T. BENITEZ  
 UNITED STATES DISTRICT JUDGE

12CR3367-BEN



DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: **12CR3367-BEN**

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FORTY-EIGHT (48) MONTHS.

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).  
☒ The court makes the following recommendations to the Bureau of Prisons:

DEFENDANT BE ALLOWED TO PARTICIPATE IN THE 500-HOUR DRUG TREATMENT PROGRAM.

DEFENDANT BE INCARCERATED WITHIN THE NORTHEAST REGION OF THE UNITED STATES.

- ☐ The defendant is remanded to the custody of the United States Marshal.  
☐ The defendant shall surrender to the United States Marshal for this district:  
☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_  
as notified by the United States Marshal.

- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
☒ before 5:00PM ON MAY 17, 2013.  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

**12CR3367-BEN**

DEFENDANT: JEREMY ADAM DALTON (1)

CASE NUMBER: 12CR3367-BEN

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
THREE (3) YEARS.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

*For offenses committed on or after September 13, 1994:*

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

12CR3367-BEN

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN**SPECIAL CONDITIONS OF SUPERVISION**

- ☒ Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- ☐ If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.
- ☐ Not transport, harbor, or assist undocumented aliens.
- ☐ Not associate with undocumented aliens or alien smugglers.
- ☐ Not reenter the United States illegally.
- ☐ Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.
- ☒ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- ☐ Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- ☐ Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- ☐ Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☒ Not own, possess, control, borrow any type of gun, ammunition, dagger, or brass knuckles, even if the time-of-possession is for one second.
- ☒ Provide complete disclosure of personal and business financial records to the probation officer as requested.
- ☐ Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- ☐ Seek and maintain full time employment and/or schooling or a combination of both.
- ☐ Resolve all outstanding warrants within \_\_\_\_\_ days.
- ☐ Complete \_\_\_\_\_ hours of community service in a program approved by the probation officer within \_\_\_\_\_
- ☐ Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of \_\_\_\_\_
- ☒ Participate in a program of drug or alcohol abuse treatment, including urinalysis or sweat patch testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN**FINE**The defendant shall pay a fine in the amount of \$10,000.00 unto the United States of America.This sum shall be paid        immediately.  
  x   as follows:

Through the Clerk, U. S. District Court, forthwith or through the Inmate Financial Responsibility Program (IFRP) at the rate of 50% of the defendant's income, or \$25.00 per quarter during the period of incarceration, whichever is greater. The defendant shall pay the fine during his supervised release at the rate of \$500 per month. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the fine judgment. Until the fine has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

The Court has determined that the defendant does have the ability to pay interest. It is ordered that:  x   The interest requirement is waived.       The interest is modified as follows:

2013 JAN 15 AM 9:26

SOUTHERN DISTRICT OF CALIFORNIA

BY gil DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 12cr3367-BEN
	)	
Plaintiff,	)	ORDER OF CRIMINAL FORFEITURE
	)	
v.	)	
	)	
JEREMY ADAM DALTON,	)	
	)	
Defendant.	)	

WHEREAS, in the Superseding Information in the above-captioned case, the United States sought forfeiture of all right, title and interest in specific properties, to wit:

1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), ZZ caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

of the above-named defendant pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), as properties involved in or traceable to the violation of 18 U.S.C. § 922(g)(1) and 924(a)(2), as charged in the Superseding Information; and

WHEREAS, on or about November 26, 2012, the above-named defendant, JEREMY ADAM DALTON ("Defendant"), pled guilty to the Superseding Information before

Magistrate Judge William McCurine, Jr., which plea provided for the criminal forfeiture of the firearms and ammunition, and included consent to the criminal forfeiture allegations pursuant to Titles 18 and 28 as set forth in the Superseding Information; and

WHEREAS, on or about December 12, 2012, the plea of the Defendant was accepted by the United States District Court; and

WHEREAS, the plea agreement provided for the criminal forfeiture of the firearms and ammunition; and

WHEREAS, by virtue of the facts set forth in the plea agreement, the United States has established the requisite nexus between the forfeited properties and the offense; and

WHEREAS, on or about December 12, 2012 the firearms and ammunition to which Defendant pled were administratively forfeited by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF):

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Based upon the guilty plea of the Defendant, all right, title and interest of Defendant JEREMY ADAM DALTON in

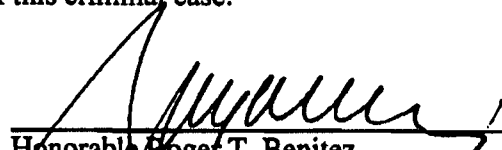
1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), .22 caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

are hereby forfeited to the United States.

2. As the aforementioned asset was previously forfeited administratively, no further action is needed as to the forfeiture aspect of this criminal case.

DATED:

1/11/2013

  
Honorable Roger T. Benitez  
United States District Judge

# EXHIBIT E

AO 245B (CASD) (Rev. 12/11) Judgment in a Criminal Case  
Sheet 1

FILED

APR 12 2013

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

JEREMY ADAM DALTON (1)

## AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 12CR3367-BEN

VIKAS BAJAJ

Defendant's Attorney

REGISTRATION NO. 34594298

☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)

THE DEFENDANT:

☒ pleaded guilty to count(s) 1s OF THE SUPERSEDING INFORMATION.☐ was found guilty on count(s) \_\_\_\_\_

after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
18 USC 922(g)(1) and 924(a)(2)	FELON IN POSSESSION OF FIREARMS AND AMMUNITION	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_
- ☒ Count(s) UNDERLYING INFORMATION is ☒ are ☐ dismissed on the motion of the United States.
- ☒ Assessment: \$100.00 forthwith or under the same repayment terms for the fine as set forth in page 5 of this Judgment and Commitment.

- ☐ Fine waived
- ☒ Forfeiture pursuant to order filed JANUARY 15, 2013, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

APRIL 8, 2013

Date of Imposition of Sentence

HON. ROGER TIBENITEZ

UNITED STATES DISTRICT JUDGE

12CR3367-BEN



DEFENDANT: JEREMY ADAM DALTON (1)

CASE NUMBER: **12CR3367-BEN****IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FIFTY-ONE (51) MONTHS.

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).  
☒ The court makes the following recommendations to the Bureau of Prisons:

DEFENDANT BE ALLOWED TO PARTICIPATE IN THE 500-HOUR DRUG TREATMENT PROGRAM.

DEFENDANT BE INCARCERATED WITHIN THE NORTHEAST REGION OF THE UNITED STATES.

- ☐ The defendant is remanded to the custody of the United States Marshal.  
☐ The defendant shall surrender to the United States Marshal for this district:  
☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_  
as notified by the United States Marshal.

- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
☒ before 5:00PM ON MAY 17, 2013.  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

**12CR3367-BEN**

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
THREE (3) YEARS.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

*For offenses committed on or after September 13, 1994:*

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

12CR3367-BEN

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN**SPECIAL CONDITIONS OF SUPERVISION**

- ☒ Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- ☐ If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.
- ☐ Not transport, harbor, or assist undocumented aliens.
- ☐ Not associate with undocumented aliens or alien smugglers.
- ☐ Not reenter the United States illegally.
- ☐ Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.
- ☒ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- ☐ Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- ☐ Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- ☐ Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☒ Not own, possess, control, borrow any type of gun, ammunition, dagger, or brass knuckles, even if the time-of-possession is for one second.
- ☒ Provide complete disclosure of personal and business financial records to the probation officer as requested.
- ☐ Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- ☐ Seek and maintain full time employment and/or schooling or a combination of both.
- ☐ Resolve all outstanding warrants within \_\_\_\_\_ days.
- ☐ Complete \_\_\_\_\_ hours of community service in a program approved by the probation officer within \_\_\_\_\_
- ☐ Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of \_\_\_\_\_
- ☒ Participate in a program of drug or alcohol abuse treatment, including urinalysis or sweat patch testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. Is required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☐

DEFENDANT: JEREMY ADAM DALTON (1)  
CASE NUMBER: 12CR3367-BEN

**FINE**

The defendant shall pay a fine in the amount of \$10,000.00 unto the United States of America.

This sum shall be paid        immediately.  
  x   as follows:

Through the Clerk, U. S. District Court, forthwith or through the Inmate Financial Responsibility Program (IFRP) at the rate of 50% of the defendant's income, or \$25.00 per quarter during the period of incarceration, whichever is greater. The defendant shall pay the fine during his supervised release at the rate of \$500 per month. These payment schedules do not foreclose the United States from exercising all legal actions, remedies, and process available to it to collect the fine judgment. Until the fine has been paid, the defendant shall notify the Clerk of the Court and the United States Attorney's Office of any change in the defendant's mailing or residence address, no later than thirty (30) days after the change occurs.

The Court has determined that the defendant does have the ability to pay interest. It is ordered that:

  x   The interest requirement is waived.

       The interest is modified as follows:

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SOUTHERN DISTRICT OF CALIFORNIA

BY gil DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 12cr3367-BEN
	)	
Plaintiff,	)	ORDER OF CRIMINAL FORFEITURE
	)	
v.	)	
	)	
JEREMY ADAM DALTON,	)	
	)	
Defendant.	)	

WHEREAS, in the Superseding Information in the above-captioned case, the United States sought forfeiture of all right, title and interest in specific properties, to wit:

1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), ZZ caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

of the above-named defendant pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), as properties involved in or traceable to the violation of 18 U.S.C. § 922(g)(1) and 924(a)(2), as charged in the Superseding Information; and

WHEREAS, on or about November 26, 2012, the above-named defendant, JEREMY ADAM DALTON ("Defendant"), pled guilty to the Superseding Information before

Magistrate Judge William McCurine, Jr., which plea provided for the criminal forfeiture of the firearms and ammunition, and included consent to the criminal forfeiture allegations pursuant to Titles 18 and 28 as set forth in the Superseding Information; and

WHEREAS, on or about December 12, 2012, the plea of the Defendant was accepted by the United States District Court; and

WHEREAS, the plea agreement provided for the criminal forfeiture of the firearms and ammunition; and

WHEREAS, by virtue of the facts set forth in the plea agreement, the United States has established the requisite nexus between the forfeited properties and the offense; and

WHEREAS, on or about December 12, 2012 the firearms and ammunition to which Defendant pled were administratively forfeited by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF):

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Based upon the guilty plea of the Defendant, all right, title and interest of Defendant JEREMY ADAM DALTON in

1. 681 rounds of assorted ammunition;
2. One Glock, model 23, .40 caliber pistol, serial number BDB110US;
3. One Taurus, model 608, .357 caliber revolver, serial number BT652166;
4. One Llama (Gabilondo & CIA), .22 caliber pistol, serial number A33354;
5. One Taurus, model PT140 Millennium Pro, .40 caliber pistol, serial number SYJ45735;
6. One Taurus, model PUB DEF JUDGE ULTLTE, .45/410 caliber revolver, serial number DM104710;
7. One Walther, model P22, .22 caliber pistol, serial number N017274;
8. One Colt, model DELTA ELITE, .10 caliber pistol, serial number 10SS0832; and
9. One Glock, model 17, .9 caliber pistol, serial number KNP396,

are hereby forfeited to the United States.

2. As the aforementioned asset was previously forfeited administratively, no further action is needed as to the forfeiture aspect of this criminal case.

DATED:

1/11/2013

  
Honorable Roger T. Benitez  
United States District Judge

**CERTIFICATE OF SERVICE**

Counsel for Defendant certifies that the foregoing is true and accurate to the best of her information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon the participants in this case, all of whom are registered CM/ECF users.

Dated: June 13, 2016

/s/ Kara Hartzler

**KARA HARTZLER**

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